OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 692

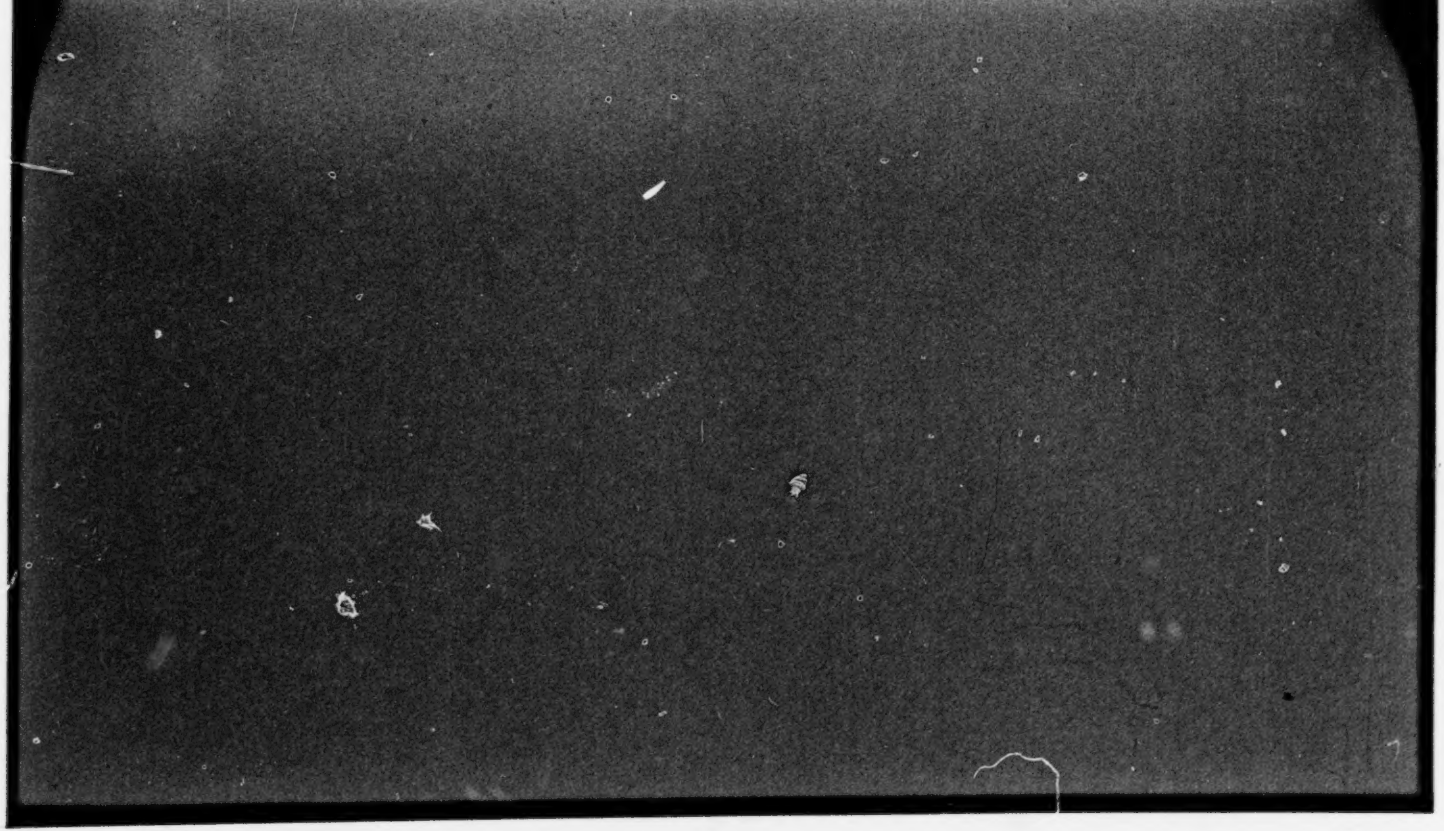
THE PURE OIL COMPANY, PETITIONER,

vs.

PASCUAL SUAREZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 22, 1965
CERTIORARI GRANTED JANUARY 17, 1966



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IN THE UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 21446

THE PURE OIL COMPANY, Defendant-Appellant,

versus

PASCUAL SUAREZ, Plaintiff-Appellee.

DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED—
Filed May 21, 1964

Appellant, The Pure Oil Company, designates for printing, as its record on appeal the record relevant to the appeal, consisting of:

1—The Complaint;

2—Appellant's motion to transfer venue to the United States District Court for the Northern District of Illinois;

3—The affidavit as to appellant's main office and state of incorporation;

4—The stipulation that The Pure Oil Company does business in the State of Florida and that interrogatories accordingly need not be answered;

5—The order of the District Court denying transfer of venue;

6—The motion for an order of the District Court al-
[fol. 2] lowing an appeal;

7—The order of the District Court certifying the appeal under 28 USC 1292 (b);

8—The order of the United States Court of Appeals for the Fifth Circuit allowing the appeal;

9—The notice of appeal and designation of record;

10—The Clerk's certificate.

Respectfully,

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans 70112; By: William S. Stone;

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida 33130;

Proctors for Defendant-Appellant.

William S. Stone, Joaquin Campoy, Advocates.

Certificate of Service (omitted in printing).

[fol. 3]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 64-32 Civ. EC

PASCUAL SUAREZ, Plaintiff,

—vs.—

PURE OIL COMPANY, a corporation, Defendant.

COMPLAINT UNDER JONES ACT AND DEMAND FOR JURY TRIAL
—Filed January 21, 1964

To the Honorable Judge of the Above Court:

Action by Seaman Without Prepayment of Costs Pursuant to Title 28 U.S.C.A., Section 1916

Comes Now the Plaintiff Pascual Suarez by his undersigned attorney and complains of the Defendant Pure Oil Company, a corporation, as follows:

For a First Cause of Action

I

That at all the times pertinent hereto the Plaintiff Pascual Suarez is a resident and citizen of the State of Florida.

II

That at all the times pertinent hereto the Plaintiff Pascual Suarez was employed in Florida by the Defendant Pure Oil Company, a corporation, in the capacity of seaman on board a certain vessel known as the S. S. "Pure Oil".

III

That at all the times pertinent hereto Pure Oil Company, [fol. 4] a corporation, owned, managed, operated and controlled the S. S. "Pure Oil"; and is a corporation doing business in the State of Florida.

IV

That on or about June 1, 1963, at sea, the Plaintiff suffered, severe, painful and permanent injury as the direct and proximate result of the negligence of the Defendant, its agents, officers, servants and employees on the vessel.

V

That by reason of the said negligent injury and the employer-employee relationship aforesaid, there is applicable hereto a certain Act of Congress known as the Jones Act, Title 46 U.S.C.A., Section 688.

VI

That on said date, at about 1415 hours, Plaintiff was sleeping in his quarters between shifts in the galley, having been awake since early in the morning to prepare breakfast and lunch for the crewmen; that he was awakened by the bo'sun who told him that the Captain had

ordered him to come topside; that Plaintiff went to the bridge and was then told that the Captain wanted him on the main deck; that Plaintiff descended the ladder on the port side to the main deck and suffered severe, painful and permanent injuries, by reason of the dangerous and unsafe condition of the ladder and the deck at the foot of the ladder, that the deck plates on the main deck were maintained so as to form an uneven and dangerous condition for persons descending from the ladder to the deck; and [fol. 5] that there was improvised thereon a plate near to but not abutting the regular deck plate, leaving a space between the regular deck plate and the improvised plate so that it forms a trap for persons descending the ladder; in addition thereto, the steps of the ladder were slippery and without grids by reason of the fact that an excess number of coats of paint have obscured the corrugated treads of the steps particularly the lower step of the ladder; that in descending the ladder and as the Plaintiff was about to step onto the deck his back foot slipped on the slippery step as he was distracted by an order from one of the officers and was caused to step into the space between the deck plate and the improvised plate of the main deck, thereby suffering the injuries aforesaid; that the aforesaid injuries were proximately caused by the negligence of the Defendant, its officers, agents, servants and employees in maintaining a dangerous and unseaworthiness condition as aforesaid and Defendant was otherwise negligent in the premises, all to Plaintiff's damage in the sum of $25,000.00.

For a Second Cause of Action

Plaintiff repeats and realleges all of the foregoing as if fully set forth at length, and in addition thereto alleges:

VII

That the Defendant had the absolute and non-delegable duty of providing the Plaintiff with a seaworthy vessel.

VIII

That the conditions aforesaid constituted a breach of [fol. 6] said duty in that the vessel was unseaworthy as the direct and proximate result of the Plaintiff's injuries and damages.

Wherefore the Plaintiff Pascual Suarez demands judgment of the Defendant Pure Oil Company, a corporation, on the First and Second Causes of Action, jointly and severally, in the sum of $25,000.00, plus costs.

Plaintiff demands trial by jury.

Arthur Roth, Esq., Attorney for Plaintiff, 1111 Ainsley Building, Miami, Florida 33132.

• • • • • • •

Note: Summons Omitted as Per Designation Copied Herein

In United States District Court

Motion to Transfer Venue—Filed February 14, 1964

Defendant, The Pure Oil Company, through its undersigned attorneys, reserving all rights, moves to transfer venue of the within proceeding under the Jones Act, 46 USC 688, to the United States District Court for the Northern District of Illinois, Eastern Division, and shows that

a—The Jones Act specifically provides: "Jurisdiction in such action shall be under the court of the district in which the defendant employer resides or in which [fol. 7] his principal office is located."

b—The Pure Oil Company is incorporated in the State of Ohio and its principal office is at Palatine, Cook County, Illinois, which is located in the Northern District of Illinois, Eastern Division, as will be shown

by affidavit to be filed in this Court and served on plaintiff prior to the hearing hereon.

Respectfully,

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130; By: James L. Hurley;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112; By: William S. Stone, Attorneys for Defendant.

Miami, February 14, 1964.

* * * * * * *

Note: Portion of Record Omitted as Per Designation Copied Herein

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IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF E. T. BERQUIST—Filed Feb. 19, 1964

State of Illinois
County of Cook

Before me, the undersigned notary public, personally ap- [fol. 8] peared E. T. Berquist, who, being duly sworn, deposed that he is Manager of the Insurance Department of The Pure Oil Company; that said company is incorporated in the State of Ohio; and that its principal office is at 200 East Golf Road, Palatine, Cook County, Illinois.

E. T. Berquist

Sworn to and subscribed before me this 14th day of February, 1964.

Theodore W. Anderson, Notary Public.

My Commission expires 11-22-65.

(Seal)

* * * * * * *

Note: Portion of Record Omitted as Per Designation Copied Herein

* * * * * * *

In United States District Court

Stipulation and Order Re Interrogatories—
Filed March 4, 1964

The parties, by their undersigned attorneys stipulate and agree that if the Defendant were to answer the interrogatories heretofore propounded by the Plaintiff, the answers would show:

I

That the Plaintiff was employed in Tampa, Florida, by the Defendant.

II

That the Defendant has transacted a substantial amount [fol. 9] of business in Florida and the Southern District of Florida, was doing substantial amounts of business in the Southern District of Florida at the time of the commencement of this action, and hopes to continue doing substantial business therein, by the operation of its vessels in the ports of Florida and said District, and the sale of its products in Florida and said district.

III

It is further stipulated and agreed that the Defendant need not answer the said interrogatories, and that this stipulation may serve as the answers thereto; and that an order may entered thereon.

Stipulated and Agreed this 27th day of February, 1964.

Arthur Roth, Esq., Attorney for Plaintiff, 1111 Ainsley Building, Miami, Florida 33132.

Deutsch, Kerrigan & Stiles and Fowler, White, Gillen, Humkey & Trenam, Esqs., Attorneys for Defendant, 401 City National Bank Building, Miami, Florida 33132, By: James L. Hurley.

ORDER

It Is So Ordered

Done and Ordered at Miami, Dade County, Florida, this 2 day of March, 1964.

Emett C. Choate, United States District Judge.

[fol. 10]

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION OF DEFENDANT TO TRANSFER THIS CAUSE—March 4, 1964

This Cause coming on upon motion of the defendant to transfer this cause and the Court having examined the evidence and pleadings on file and having heard the argument of counsel and being otherwise advised in the premises, it is hereby

Ordered that the motion of the defendant is hereby denied on the grounds that the General Venue Statute 28 U.S.C. 1391 and the venue provisions of the Federal Employers' Liability Act (FELA), Title 45 U.S.C.A., Section 56 are applicable to and included in the Jones Act, Title 46 U.S. C.A., Section 688 as to permit this action to be brought in any district where the defendant is doing business.

Done and Ordered in Chambers, at Miami, Dade County, Florida, this 4 day of March, 1964.

Emett C. Choate, District Court Judge.

IN UNITED STATES DISTRICT COURT

MOTION FOR SUPPLEMENTAL ORDER ALLOWING APPEAL—Filed March 17, 1964

Defendant, The Pure Oil Company, through its undersigned attorneys, suggests to the Court that on March 4, 1964, the Court entered an order denying defendant's mo-

tion to transfer venue of the within proceedings under the Jones Act, 46 USC 688, to the United States District Court for the Northern District of Illinois, Eastern Division; and defendant shows that:

[fol. 11] Said motion and order involve a controlling question of law concerning venue of actions under the Jones Act, as to which there is substantial ground for difference of opinion; and that an immediate appeal from the said order may immediately advance the ultimate termination of this litigation by avoiding a possible second trial; and plaintiff's counsel has informed defendant's counsel that plaintiff is agreeable to certification of the matter for appeal;

And defendant accordingly moved the Court to supplement the order entered March 4, 1964, to allow an immediate appeal, pursuant to the provisions of 28 USC 1292 (b); and to stay further proceedings against defendant pending disposition of the appeal.

Respectfully,

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130, By: Wm. C. Norwood;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112, By: William S. Stone, Attorneys for Defendant.

Miami
March 16th, 1964

* * * * * * *

Note: Memorandum on motion for Supplemental Order Certifying Appeal omitted as per designation copied herein.

* * * * * * *

[fol. 12]

IN UNITED STATES DISTRICT COURT

ORDER FOR LEAVE TO PROCEED WITH APPEAL—
March 16, 1964

On motion of defendant for an order of this Court, supplementing its order entered March 4, 1964, entered after hearing on defendant's motion for transfer of venue to the United States District Court for the Northern District of Illinois, which motion was argued on March 2, 1964; and the Court adhering to the ruling therein, and

The Court also being of opinion that the case is one for certification under 28 USC 1292 (b), as involving a controlling question of law as to which there is substantial ground for difference of opinion; and that an immediate appeal from the order may materially advance ultimate termination of the litigation, and

Defendant having timely and sufficiently objected to venue and having moved for transfer of venue, thus having preserved its rights, and having moved for certification of appeal with dispatch within ten days of being apprised of the aforesaid order denying transfer of venue herein, and a stay of proceedings being authorized under 28 USC 1292 (b), and

Plaintiff interposing no objection to certification of the aforesaid matters for appeal,

It Is Ordered that defendant be allowed to apply to the United States Court of Appeals within ten (10) days from the date of signature hereof, for leave to proceed with an appeal herein; and

[fol. 13] It Is Further Ordered that all proceedings be stayed in this Court pending disposition of defendant's appeal by the United States Court of Appeals for the Fifth Circuit.

Dated at Miami, Florida, March 16, 1964.

Emett C. Choate, United States District Judge.

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112, Attorneys for Defendant.

In United States District Court

Order Granting Motion for Leave to Appeal—
Filed April 14, 1964

Before Rives and Jones, Circuit Judges and Bootle, District Judge.

By the Court:

It Is Ordered that leave to appeal from an interlocutory order of the District Court for the Southern District of Florida entered on March 4, 1964 in a case styled Pascual Suarez, plaintiff versus the Pure Oil Company, Defendant, No. 64-32-Civil, be, and the same is hereby Granted.

(Original Filed April 9, 1964)

A true copy

Test: Edward W. Wadsworth, Clerk, U. S. Court of Appeals, Fifth Circuit, By G. F. Ganucheau, Deputy, New Orleans, Louisiana.

* * * * * * *

[fol. 14] Note: Letter from G. F. Ganucheau to Mr. William S. Stone, omitted as per designation copied herein

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In United States District Court

Notice of Appeal and Designation of Record—
Filed April 14, 1964

Defendant, The Pure Oil Company, through its undersigned attorneys, reserving all rights, hereby gives notice

of its appeal to the United States Court of Appeals for the Fifth Circuit from the order of this Court denying defendant's motion to transfer venue of the within proceeding under the Jones Act, 46 USC 688, to the United States District Court for the Northern District of Illinois, Eastern Division; and designates, for transmittal to the United States Court of Appeals for the Fifth Circuit, the entire record.

Defendant shows that on April 9, 1964, the aforesaid United States Court of Appeals entered an order allowing this appeal.

Respectfully,

Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida, 33130, By: James R. Hurley;

Deutsch, Kerrigan & Stiles, 1700 Hibernia Bank Building, New Orleans, Louisiana, 70112, By: William S. Stone, Attorneys for Defendant.

Miami
April 14, 1964

[fol. 15] I certify that the foregoing notice of appeal and designation of record were served on plaintiff by mailing the same to his attorney of record, Arthur Roth, Esq., 1111 Ainsley Building, Miami, Florida, 33132, on this 14 day of April, 1964.

James L. Hurley

* * * * * * *

Note: Cost Bond omitted as per designation copied herein

In United States District Court

Stipulation Re Parties—June 11, 1964

It Is Stipulated and Agreed by the parties that the Appellee, Pascual Suarez, is a resident and citizen of Hillsborough County, Florida, that such citizenship was made known to the Trial Judge, that Hillsborough County, Florida, is without the Southern District of Florida, and that the record may reflect such citizenship as a stipulated fact.

It Is Further Stipulated and Agreed that the Appellant, The Pure Oil Company, an Ohio corporation, is registered with the Secretary of State to do business in the State of Florida.

Dated this 11 day of June, 1964.

Arthur Roth, Esq., Attorney for Appellee, 1111 Ainsley Building, Miami, Florida 33132, Arthur Roth.

Deutsch, Kerrigan & Stiles, Esqs., 1700 Hibernia Bank Building, New Orleans, La. 70112;

Fowler, White, Gillen, Humkey & Trenan, Esqs., 401 City National Bank Building, Miami, Florida 33130, Attorneys for Appellant, By: James L. Hurley.

[fol. 16] Clerk's Certificate (omitted in printing).

[fol. 17]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21446

THE PURE OIL COMPANY, Petitioner,

versus

PASCUAL SUAREZ, Respondent.

ORDER ON MOTION FOR LEAVE TO APPEAL UNDER 28 U.S.C. SECTION 1292(b).

Before RIVES and JONES, Circuit Judges and BOOTLE, District Judge.

By the Court:

It Is Ordered that leave to appeal from an interlocutory order of the District Court for the Southern District of Florida entered on March 4, 1964 in a case styled Pascual Suarez, Plaintiff versus the Pure Oil Company, Defendant, No. 64-32-Civil, be, and the same is hereby Granted.

[File endorsement omitted]

[fol. 18]

IN THE UNITED STATES COURT OF APPEALS

ARGUMENT AND SUBMISSION—January 13, 1965

[fol. 19]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21446

THE PURE OIL COMPANY, Appellant,

versus

PASCUAL SUAREZ, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

OPINION—June 16, 1965

Before Wisdom and Gewin, Circuit Judges, and Brewster, District Judge.

Gewin, Circuit Judge: The appellee instituted this civil action in the District Court for the Southern District of Florida to recover damages for injuries he received while employed in the capacity of a seaman aboard the vessel S.S. "Pure Oil," owned and operated by The Pure Oil Company. His complaint proceeded on two theories: (1) negli- [fol. 20] gence under the Jones Act, 46 U.S.C.A. § 688, and (2) breach of the shipowner's duty to provide a seaworthy vessel. The company moved to transfer the case to the Northern District of Illinois on the ground that venue was

not properly laid in the Southern District of Florida.[1] The trial court denied the motion, but certified the question under 28 U.S.C.A. § 1292(b), and this interlocutory appeal ensued.

The relevant provision of the Jones Act, 46 U.S.C.A. § 688, provides as follows:

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer *resides or in which his principal office is located.*" (Emphasis supplied.)

The parties stipulated that The Pure Oil Company "has transacted a substantial amount of business in Florida and the Southern District of Florida, was doing substantial amounts of business in the Southern District of Florida at the time of the commencement of this action, and hopes to continue doing substantial business therein. . . ." The company also filed an uncontradicted affidavit which states that it is incorporated in Ohio and maintains its principal office in Cook County, Illinois. The sole question for decision is whether the provision of the Jones Act quoted above enables an injured seaman to sue his employer corporation [fol. 21] wherever the employer does business or whether his choice of forums is limited to the districts in which the employer is incorporated and maintains its principal office.

Although the quoted provision of the Jones Act literally speaks of "jurisdiction," it was early held to refer only to proper venue. *Panama R.R.* v. *Johnson,* 265 U.S. 375, 68 L.Ed. 748 (1924). Hence, the privilege need not be given effect unless the defendant insists upon it. *E.g., Neirbo Co.* v. *Bethlehem Shipbuilding Corp.,* 308 U.S. 165, 84 L.Ed. 167 (1939); *Panama R.R.* v. *Johnson, supra;*

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[1] The special venue requirements of the Jones Act must be satisfied where a civil action is predicated on both unseaworthiness and Jones Act theories, even though the provisions of the general venue section would apply in a civil action based solely on unseaworthiness. See Branic v. Wheeling Steel Corp. (3 Cir. 1945) 152 F.2d 887.

Wright Federal Courts 128 (1963). It is established that, in the absence of a statutory directive to the contrary, the "residence" of a corporation for venue purposes is limited to the state of its incorporation. See *Suttle* v. *Reich Bros. Constr. Co.*, 333 U.S. 163, 92 L.Ed. 614 (1948); *Shaw* v. *Quincy Mining Co.*, 145 U.S. 444, 450, 36 L.Ed. 768, 771 (1892).

The appellee makes two arguments in support of the district court's denial of the motion to transfer, the first of which can be disposed of in short order. According to appellee, the Jones Act was passed in 1920 to expand and liberalize the relief afforded to seamen for injuries they sustained in their employment. Instead of devising separate standards to be applied in personal injury suits by seamen, Congress adopted the expedient of incorporating by reference the more detailed provisions which govern the liability of railroads to their employees.[2] Therefore, [fol. 22] appellee argues that the special venue provisions of the Federal Employers Liability Act, under which venue against Pure Oil would undoubtedly be proper in the instant case,[3] are applicable to a civil action under the Jones Act. However, this argument does not adequately accommodate the well-recognized and eminently logical canon of statutory construction that the specific provisions of a statute control exclusively over the broader and more general provisions of another statute which may relate to the same subject matter in the absence of a clear manifestation to the contrary by the legislature. See *Bulova Watch Co.* v. *United States*, 6 L.Ed.2d 72, 76, (1961); *Fourco Glass*

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[2] "[A]nd in such action *all* statutes of the United States *modifying or extending* the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ." 46 U.S.C.A. § 688 (Emphasis supplied.)

[3] The FELA contains much broader venue provisions than those of the Jones Act. Under that statute, venue is proper in the district where the defendant resides, where the cause of action arose, or where the defendant is "doing business" at the time of the commencement of the action. 45 U.S.C.A. § 56.

Co. v. *Transmirra Prods. Corp.*, 353 U.S. 222, 228-29, 1 L.Ed.2d 786, 790-91 (1957). As one court has stated, "The short answer to [appellee's] argument is that Congress has seen fit to impose different venue requirements in Jones Act cases. To now hold that the venue requirements under the Federal Employers' Liability Act are controlling would negate the plain language of 46 U.S.C. § 688." *Rodriquez* v. *United Fruit Co.*, 236 F. Supp. 680, 682 (E.D.Va. 1964). We are not persuaded to hold otherwise merely because the two other provisions of 45 U.S.C.A. § 56 have been held applicable in Jones Act cases.[4] Neither of the subjects covered [fol. 23] by those provisions is dealt with specifically in the Jones Act, and they would thus be fairly covered by the general reference to the FELA. See *Panama R.R.* v. *Johnson*, 264 U.S. 375, 392, 68 L.Ed. 748, 755 (1924).[5]

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[4] The same section of the FELA which contains its venue provision also contains a provision fixing the limitation period for filing suits and a provision reserving to the state courts concurrent jurisdiction over FELA claims. Both these provisions were applied to the Jones Act in Engel v. Davenport, 271 U.S. 33, 70 L.Ed. 813 (1926). See also Cox v. Roth, 348 U.S. 207, 99 L.Ed. 260 (1955); Panama R.R. v. Vasquez, 271 U.S. 557, 70 L.Ed. 1085 (1926).

[5] Appellee also relies upon the decision of this Circuit in Arthur v. Compagnie Generale Transatlantique (5 Cir. 1934) 74 F.2d 662 as a justification for construing the venue provisions of the Jones Act as nonexclusive. In that case we held that the Jones Act's venue requirements were inapplicable to a suit in a federal court against a defendant incorporated in a foreign country. We do not deem this case controlling in the instant situation. Where, for example, an American seaman sues an alien corporation under the Jones Act for an injury which occurred in the territorial waters of the United States, the *Arthur* result would certainly be compelled as a practical necessity; otherwise, the venue provision of the Jones Act would effectively preclude the seaman from invoking any federal forum if the employer chose to raise his venue objection. Such was surely not the intention of the drafters of the Jones Act. Indeed, the Jones Act venue requirements have also been held inapplicable in state courts. Bainbridge v. Merchants & Miners' Transp. Co., 287 U.S. 278, 77 L.Ed. 302 (1932). We do not think that the *Arthur* case should be read as suggesting that the venue provisions of the Jones Act do not furnish the exclusive venue requirements in any circumstances. Clearly they apply to a domestic corporation such as we have in the instant case.

Appellee makes a far more appealing argument, at least from the point of view of statutory construction, in its assertion that the definition of the term "residence" which was added to the general venue statute in 1948, 28 U.S.C.A. § 1391(c), should be read into the Jones Act venue requirements. Prior to 1948—and, indeed, at the time Congress enacted the Jones Act in 1920—the general venue statute was geared to the residence of either the defendant or, in diversity cases, the plaintiff as well. The residence of a corporation was uniformly restricted to the state of its incorporation, even in Jones Act suits. E.g., *Burris* v. *Matson Nav. Co.* (S.D.N.Y. 1940) 37 F. Supp. 648. In the course of the general revision of the Judicial Code in 1948, [fol. 24] Congress inserted subsection (c) into the general venue statute. That section provides as follows:

> "(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, *and such judicial district shall be regarded as the residence of such corporation for venue purposes.*" (Emphasis supplied.)

It is the last clause of that subsection which concerns us primarily, for if that phrase can be read as defining the residence of a defendant corporation for the purposes of the Jones Act's venue provisions, then the trial court properly denied Pure Oil's motion to transfer.

If section 1391(c) and the Jones Act venue provision are viewed together in light of the remedial purposes of the Jones Act, the most logical conclusion might well be that the general venue statute did expand the definition of residence in the Jones Act. In fact, all the courts which were faced with the question between 1948 and 1957 read the Jones Act in light of the new concept of corporate residence embodied in section 1391(c).[6]

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[6] See Hutchison v. Pacific-Atlantic S.S. Co. (9 Cir. 1954) 217 F.2d 384; Franklin v. Tomlinson Fleet Corp. (N.D. Ill. 1957) 158 F. Supp. 850; Phillips v. Pope & Talbot, Inc. (S.D.N.Y. 1952), 102

In 1957 however, the Supreme Court held that section 1391(c) did not define the residence of a corporate de- [fol. 25] fendant in patent infringement litigation. *Fourco Glass Co.* v. *Transmirra Prods. Corp.*, 353 U.S. 222, 1 L.Ed. 2d 786 (1957). Since the decision in that case, most of the federal courts have concluded that its rationale foreclosed the application of section 1391(c) to Jones Act venue,[7] although a few have reached a contrary result.[8] The only other Circuit court which has confronted the issue in light of the *Fourco* case has read that decision as militating against the application of section 1391(c) to the Jones Act. *Leith* v. *Oil Transport Co.* (3 Cir. 1963) 321 F.2d 591. In addition, many courts have applied the *Fourco* rationale to other special venue statutes, holding that the provisions of the general venue section do not supplement those special statutes.[9]

F. Supp. 51; Mincy v. Detroit & Cleveland Nav. Co. (S.D.N.Y. 1950) 94 F. Supp. 456; Neset v. Christensen (E.D.N.Y. 1950) 92 F. Supp. 78; Bounds v. Streckfus Steamers, Inc. (D.Del. 1950) 89 F. Supp. 242; Bagner v. Blidberg Rothchild Co. (E.D.Pa. 1949) 84 F. Supp. 973.

[7] Leith v. Oil Transport Co. (3 Cir. 1963) 321 F.2d 591; Barnes v. E.J. Platte Fisheries (N.D.Miss. 1964) 237 F. Supp. 390; Rodriquez v. United Fruit Co. (E.D. Va. 1964) 236 F. Supp. 680; Blanco v. Gulf Coast Transp., Inc. (W.D. La. 1964) 235 F. Supp. 197.

[8] Connolly v. Farrell Lines, Inc. (1 Cir.) 268 F.2d 653, *cert. denied*, 361 U.S. 902 (1959); Garland v. Alaska S.S. Co. (D. Alaska 1961) 194 F. Supp. 792. These decisions are of dubious precedent value, however, since neither opinion discusses or cites the *Fourco* case.

[9] *E.g.*, Zonolite Co. v. United States (W.D. Pa. 1962) 209 F. Supp. 597 (venue in suits to set aside or enforce ICC orders); United Transit Co. v. United States (M.D. Tenn. 1957) 158 F. Supp. 856 (civil actions against the United States); R.J. Coulter Funeral Home, Inc. v. National Burial Ins. Co. (E.D. Tenn. 1960) 192 F. Supp. 522 (special venue provisions of the Clayton Act). Generally, the commentators seem to regard the *Fourco* result as necessary in all situations where special venue statutes come into play. See 1 Barron & Holtzoff, Federal Practice & Procedure § 80,

Hence, a casual glance at the rather formidable array of authorities would suggest that the court in *Leith* was cor-
[fol. 26] rect in its strict application of the *Fourco* result to suits under the Jones Act. Nevertheless, we must disagree with the Third Circuit's interpretation of the *Fourco* opinion.[10] While we certainly deem that opinion controlling, we think its rationale compels a result contrary to that reach in *Leith*.

The special venue statute to which the plaintiff in *Fourco* sought to apply section 1391(c) provided as follows:

> "Any civil action for patent infringement may be brought in the judicial district where the defendant *resides*, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C.A. § 1400(b). (Emphasis supplied.)

That section was re-enacted in 1948 along with the general revision of the Judicial Code which resulted in the expanded definition of corporate residence in section 1391(c). When section 1400(b) was re-enacted, the word "residence" was substituted for the word "inhabitant," but the court
[fol. 27] concluded from an examination of the legislative

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at 387 (1960); 1 Moore, Federal Practice ¶0.144. However, Professor Moore has criticized the *Fourco* opinion as unsound. See 1 Moore, Federal Practice ¶0.144[9], at 1632.

[10] We do not minimize the fact that *Leith* is diametrically opposed to the result reached in the instant case. However, it does seem appropriate to observe that the court in *Leith* was careful to point out in its statement of facts that the suit was filed in a Pennsylvania federal court, the plaintiff was a resident of Tennessee, the defendants were incorporated and maintained their principal places of business in Louisiana, they were not licensed to do business in Pennsylvania, and the accident occurred while the vessel was docked in the navigable waters of the Ohio River at Paducah, Kentucky. In the course of the opinion in *Leith*, the court made pointed reference to the facts mentioned: "It did not arise there; the plaintiff does not live there; the defendants are not incorporated there and do not maintain a place of business there." 321 F.2d at 594.

history of section 1400(b) that no substantive change was intended by the change in wording. Furthermore, as indicated by the Supreme Court's own review of the reasons for the passage of the predecessor to section 1400(b) in *Stonite Prods. Co.* v. *Melvin Lloyd Co.*, 315 U.S. 561, 86 L.Ed. 1026 (1942), the special venue section applicable to patent infringement actions was intended as a restrictive measure, designed to place greater limits on venue in patent infringement suits than those which had previously applied under the general venue provisions then in force. The Supreme Court thus concluded:

> "In light of the fact that the Revisers' Notes do not express any substantive change [in § 1400(b)], and of the fact that several of those having importantly to do with the revision say no change is to be presumed unless clearly expressed, and no substantive change being otherwise apparent, we hold that 28 U.S.C. § 1400(b) made no substantive change from 28 U.S.C. (1940 ed.) § 109 as it stood and was dealt with in the Stonite case."

353 U.S. at 227-28, 1 L.Ed.2d at 790.

We do not feel that the Supreme Court intended to foreclose the application of the expanded concept of a corporate defendant's residence to all special venue statutes. Our reading of *Fourco* convinces us that the court contemplates an analysis of the relationship of section 1391(c) to special venue statutes in light of the history and purpose of the [fol. 28] special provisions.[11] As indicated above, the Court in *Fourco* focused sharply on the congressional intent that Section 1400(b) have a restrictive effect. Applying this broad principle to the specific venue statute which applies to Jones Act suits, we hold that section 1391(c) furnishes

[11] Such an approach has also been suggested by commentators. See, *e.g.*, Note, Venue in Private Antitrust Suits, 37 N.Y.U. L.Rev. 268 (1962); Recent Decision, 62 Mich. L.Rev. 897 (1964) (criticizing the result in *Leith* v. *Oil Transport Co.*, *supra*).

the definition of corporate residence for that statute. When the Jones Act was passed in 1920, the general venue section restricted proper venue over a corporate defendant to the district of incorporation. Hence, the inference is clear that the special venue requirements of the Jones Act, in contradistinction to those relating to patent infringement suits, were expansive and afforded the seaman an additional federal forum in which to present his Jones Act claim—the district of the principal office of his employer. Citation of authority is unnecessary for the proposition that the Jones Act is remedial legislation which is to be construed liberally in favor of enlarging the remedies of the injured seaman. We think it is also significant that the consent doctrine established in *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 84 L.Ed. 167 (1939), under which a corporate defendant is deemed to have acceded to venue in the federal courts of a state by appointing an agent and submitting to the jurisdiction of the state courts, was applied to Jones Act suits.[12] *Antonana* v. *Ore S.S. Corp.*, (S.D.N.Y. 1956) [fol. 29] 144 F. Supp. 486; *Bennett* v. *Standard Oil Co.* (D.Md. 1940) 33 F. Supp. 871; see 1 Moore's Federal Practice ¶0.142[5-3], at 1492. The courts, on the other hand, have consistently refused to apply *Neirbo* to defendants in patent infringement litigation. *E.g.*, *American Chemical Paint Co.* v. *Dow Chemical Co.* (6 Cir. 1947) 161 F.2d 956;

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[12] We note that the *Neirbo* doctrine could conceivably apply in the instant case, but the record is inadequately developed on the question. The parties stipulated that the defendant is "registered with the Secretary of State to do business in the State of Florida." Registration may refer to the statutory scheme embodied in Fla. Stat. Ann., §§ 47.34, 47.36, and 47.43, under which a foreign corporation must designate an office where process may be served or an agent on whom process may be served as a prerequisite to the maintenance of actions in the state courts. The *Neirbo* question was apparently not raised or considered in the district court. Furthermore, we cannot determine from the stipulations whether there has been such compliance with the Florida statutes concerning qualification to do business that *Neirbo* could be invoked. See Moss v. Atlantic Coast Line R.R. (2 Cir. 1945) 149 F.2d 701; Donahue v. M. A. Henry Co. (S.D.N.Y. 1948) 78 F. Supp. 91.

Bulldog Elec. Prods. Co. v. *Cole Elec. Prods. Co.* (2 Cir. 1943) 134 F.2d 545. In light of these considerations, we do not think the result reached in *Fourco* is appropriate in the instant case.

Indeed, if a broad reading is not accorded the Jones Act, its remedial purpose may be thwarted by working a great inconvenience on the injured seaman who wishes to present his Jones Act claims in the federal court. In some cases, requiring the seaman to bring his action far from his home might deter his pressing his claims at all because of the prohibitive cost of transporting witnesses and conducting the trial in a distant forum. No greater burden is imposed on the employer than would exist in any other civil action which he might be called upon to defend. Furthermore, if the employer were sued in a forum inconvenient to him, he could invoke the transfer provisions of 28 U.S.C.A. § 1404(a). A restrictive reading of the Jones [fol. 30] Act venue provisions, on the other hand, would severely circumscribe the seaman plaintiff's remedies unless, of course, he institutes suit in a state court, where the Jones Act venue requirements would be inapplicable. See *Bainbridge* v. *Merchants & Miners' Transp. Co.*, 287 U.S. 278, 77 L.Ed. 302 (1932). An injured seaman has the alternative of filing a suit in admiralty in which he seeks relief under the substantive provisions of the Jones Act. In such a situation the venue provisions of the Jones Act would probably not restrict his choice of forums, see, *e.g.*, *Brown* v. *C. D. Mallory & Co.* (3 Cir. 1941) 122 F.2d 98; 2 Norris, The Law of Seamen § 675, but the plaintiff would have to forego his right to trial by jury.

We think the Jones Act's venue provision was meant to provide a convenient federal forum for the satisfaction of the seaman's personal injury claims against his employer. It is consonant with these purposes to give the term "residence" as used in the Jones Act an expansive interpretation, and we do not think such a reading of the Jones Act does violence to the rationale of *Fourco Glass Co.* v. *Trans-*

mirra Prods. Corp.[13] Both the *Fourco* opinion and the patent infringement statute adhere to the fundamental principle that an action may be brought against a corporation not only where the corporation resides, but also where [fol. 31] the offending corporation has committed acts of infringement (the wrong) and has a regular and established place of business. In the very beginning of the *Fourco* opinion the Supreme Court pointedly observes that the trial court concluded that "there had been no showing of any acts of infringement in the district of suit . . ." In addition to the stipulated facts mentioned above, the complaint in the instant case alleges that the plaintiff is a resident citizen of Florida, that he was employed in Florida by the defendant in the capacity of seaman, that the defendant is a corporation doing business in the State of Florida, and that the alleged injury arose out of the employer-employee relationship. It is further stipulated that the vessels of the defendant operate in the ports of Florida and in the Southern District, that it sells its products in Florida in that district, and that the defendant "is registered with the Secretary of State to do business in the State of Florida."

There is a shocking inconsistency in a rule of law which permits a corporation to maintain a regular, established place of business in the district in question, transact a substantial amount of business there both before and after the event about which the plaintiff complains and at the time the suit is filed with the expressed intention to continue doing business in such locale, but allows the corporation to insist on a trial of the factual issues in the district in which it is incorporated or in which its principal office is located. To do so would authorize it "to run with the hare and hold with the hound."

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[13] Our construction of the special venue provisions of the Jones Act does not render totally meaningless the second predicate for venue in that section. It would still operate to provide an additional forum in which an injured seaman could sue an individual employer; venue as to such an employer would be proper in the district in which his principal office is located as well as the district in which he maintains his residence.

In the doing of substantial business in an area a corporation becomes a part of the mainstream to commerce which [fol. 32] affects the welfare of many people including those it may negligently injure. It receives the benefits which normally come to those engaged in business in the area. The right to choose to do substantial business in a particular locality does not have to be exercised. However, once the choice is made it would be unjust to permit the offending corporation to continue its operations, in the course of which it also may be creating liabilities, and at the same time to grant it complete immunity from those liabilities by shielding it with a carapace of technical venue construction. Usually the witnesses, the evidence, and all the facts leading to the ultimate inquiry as to the truth could be presented more effectively and with less inconvenience than would be possible at the residence or principal place of business of the corporation, often a substantial distance from the place of the wrong. Such a principle cuts two ways and may serve both plaintiff and defendant alike.

We note in reaching this result we must assume that the purpose of the second clause of section 1391(c) was to define the residence of a corporate defendant for purposes other than those delineated in section 1391(a) and (b). Such an assumption appears to comport with the wording of the section. Of course, there is no problem of statutory construction present in the instant case which is comparable to that treated in *Robert E. Lee & Co.* v. *Veatch* (4 Cir. 1961) 301 F.2d 434, where the question of the applicability of the definition to a corporate plaintiff arose. Indeed, the difficulty of applying section 1391(c) to a corporation suing as plaintiff may be, in part at least, accountable for the refusal of courts to apply that section [fol. 33] to certain other special venue statutes, such as 28 U.S.C.A. § 1398, which relates to review of ICC orders, and 28 U.S.C.A. § 1402, which governs venue in civil actions against the United States.

For the foregoing reasons, we think the district court's denial of the motion to transfer was correct. As we read the Jones Act, it now provides that venue with respect to

a corporate employer defendant is proper in any district in which it is "incorporated or licensed to do business or is doing business." The denial of the motion to transfer is Affirmed, and the case is Remanded to the district court for further proceedings.

[fol. 35]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21446

D. C. Docket No. C. A. 64-32-Civ-EC

THE PURE OIL COMPANY, Appellant,

versus

PASCUAL SUAREZ, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before Wisdom and Gewin, Circuit Judges, and Brewster, District Judge.

JUDGMENT—June 16, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the denial of the motion to transfer in this cause be, and the same is hereby affirmed, and that this cause be and it is hereby remanded to the District Court for further proceedings in accordance with the opinion of this Court.

It is further ordered and adjudged that the appellant, The Pure Oil Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 16, 1965.

Issued as Mandate:

[fol. 36] [File endorsement omitted]

[fol. 38]

IN THE UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 21,446

THE PURE OIL COMPANY, Appellant,

versus

PASCUAL SUAREZ, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Honorable Emett C. Choate, District Judge.

MOTION FOR REHEARING—Filed July 2, 1965

Appellant, The Pure Oil Company, moves for rehearing *en banc*, or in the alternative for rehearing, showing that

a—The issue involves venue under the Jones Act, a matter of great importance in which nationwide conformity is essential to the requisite uniformity and harmony of admiralty and maritime law;

b—This Court's opinion admittedly is in conflict with the holding of the United States Court of Appeals for the Third Circuit on the same question, and intercircuit conflict should be avoided;

[fol. 39] c—This Court has no power to deprive appellant of its venue privilege allowed by *Panama Railroad Co.* vs. *Johnson*, 265 US 375;

d—The direct result of this Court's holding is to create a special venue (wherever the employer does business) which only Congress can create, but which Congress rejected after several Senate-House conferences, prior to passing the Jones Act;

e—This Court's holding that the venue provisions of the Jones Act must be given an "expansive interpretation" is at odds with the expressed intent of Congress;

f—This Court's decision disagrees with every decision which has applied the rule of *Fourco Glass Co.* vs. *Transmirra Products Corp.*, 353 US 222, to special venue statutes, and is directly contrary to the holding in *Fourco* that "no changes of law or policy are to be presumed from changes of language in the (1948) revision unless an intent to make such changes is clearly expressed". 352 US at 227.

Respectfully,

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Fowler, White, Gillen, Humkey & Trenam, City National Bank Building, Miami, Florida 33130, Attorneys for Appellant.

William S. Stone, Joaquin Campoy, Advocates.

[fol. 46]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—
September 7, 1965

Before Wisdom and Gewin, Circuit Judges, and Brewster, District Judge.

PER CURIAM:

It Is Ordered that the petition for rehearing in the above entitled and numbered cause be and the same is hereby Denied.

[File endorsement omitted]

[fol. 47] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 48]

SUPREME COURT OF THE UNITED STATES

No. 692, October Term, 1965

THE PURE OIL COMPANY, Petitioner,

v.

PASCUAL SUAREZ.

ORDER ALLOWING CERTIORARI—January 17, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILED
OCT 23 1965
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 692

THE PURE OIL COMPANY,
Petitioner

versus

PASCUAL SUAREZ,
Respondent

PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Supreme Court of the United States

OCTOBER TERM, 1965

No.

THE PURE OIL COMPANY,
Petitioner

versus

PASCUAL SUAREZ,
Respondent

PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner seeks certiorari to review the judgment of the Court of Appeals for the Fifth Circuit in this case, and, in support of its petition, respectfully shows:

Opinion Below and **Jurisdiction**

The District Court rendered no opinion. The opinion of the Court of Appeals is reported at 346 F2d 890. The judgment of the Court of Appeals is dated June 16, 1965, and was entered on the same date. Rehearing was denied on September 7, 1965. Jurisdiction of this Court lies under 28 USC 1254(1).

Question Presented

Whether venue under the Jones Act, 46 USC 688, is limited to "the court of the district in which the defendant employer resides (*i.e.*, is incorporated) or in which his principal office is located", as explicitly provided in the special-venue provisions of the Act as construed judicially prior to 1948, and as held since 1948 by the Third Circuit and several district courts, or whether such venue was extended by the general venue provision [28 USC 1391(c)] of the 1948 revision of the Judicial Code to include districts in which the employer merely does business, as held by other federal courts, and by the Fifth Circuit in this case.

The Fifth Circuit recognized, in its opinion herein, "that *Leith* (the Third Circuit's decision in point) is diametrically opposed to the result reached in the instant case" (346 F2d at 894; Appendix, p. 13).

Statutes Involved

46 USC 688: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action

all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. ***Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.***" (Emphasis supplied.)

28 USC 1391(c): "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

Statement of the Case

Respondent, a seaman and member of the crew of the S/S *Pure Oil,* having been injured aboard his vessel on the high seas, filed a civil action against petitioner, his former employer, under the Jones Act, in the District Court for the Southern District of Florida, a State in which petitioner does business. R 4, 8.

Petitioner promptly moved to transfer the action to the district in which it has its principal office, the Northern District of Illinois, Eastern Division. R 6.

After hearing argument, the District Court entered an order refusing the transfer on the ground that venue under the Jones Act lies "in any district where the defendant is doing business". R 10.

An interlocutory appeal was granted from the order, which was affirmed by the Court of Appeals.

Argument

In *Fourco Glass Co. vs Transmirra Products Corp.*, 353 US 222 (1957), this Court granted certiorari to resolve an inter-Circuit conflict as to the impact of the 1948 revision of the Judicial Code on special-venue provisions, and held that the general-venue provisions of the 1948 revision, fixing a corporation's residence for venue purposes wherever it is doing business, neither override nor expand the meaning of the special-venue provisions restricting patent suits to the defendant's residence, theretofore defined judicially as the state of incorporation. In so holding, this Court declared that "no changes of law or policy are to be presumed from changes of language in the revision unless an intent to make such changes is clearly expressed". 353 US at 227.[1]

In *Leith vs Oil Transport Co.*, 321 F2d 591 (CA 3-1963), the Court of Appeals for the Third Circuit held that, by virtue of this Court's *Fourco* holding, the general-venue provisions of the 1948 revision neither override nor expand the special-venue provision of the Jones Act, laying venue of actions thereunder exclusively in the district "in which the defendant employer resides or in which his principal office is located", and that venue of a Jones-Act suit may accordingly not be laid in any other district in which the defendant may be doing business.

In the case at bar, the Fifth Circuit arrived at precisely the contrary conclusion, holding that Jones-Act venue is,

[1] One of the conflicting decisions disapproved in that case by this Court was that of the Court of Appeals for the Fifth Circuit in *Dalton vs Shakespeare Co.*, 196 F2d 469 (1952).

since 1948, properly laid wherever the defendant is doing business; and the Court conceded "that *Leith* is diametrically opposed to the result reached in the instant case" (346 F2d at 894; Appendix, p. 13).

This conflict between the Third and Fifth Circuits mirrors the same conflict among other federal courts.[2]

Unlike the Third Circuit and certain of the courts whose decisions are cited in footnote 2, the Fifth Circuit read this Court's *Fourco* opinion as not laying down any general rule as to the impact of the 1948 revision on special-venue provisions, but as contemplating "an analysis of the relationship of section 1391(c) to special-venue statutes in light of the history and purpose of the special provisions" (346 F2d at 895; Appendix, p. 15). However, the Congressional history and purpose reflected in the Jones-Act venue provision seem clearly contrary to the Fifth Circuit's conclusion.[3]

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[2] As to Jones-Act venue, district courts in Louisiana, Mississippi and Virginia have agreed with the Third Circuit. *Blanco vs Gulf Coast Transp.*, 235 FS 197 (WD La.-1964); *Barnes vs E. J. Platt Fisheries*, 237 FS 390 (ND Miss.-1964); *Rodriquez vs United Fruit Co.*, 236 FS 680 (ED Va.-1964). The First Circuit and the district court for Alaska have reached the opposite result, although without discussing this Court's *Fourco* decision. *Connolly vs Farrell Lines*, 268 F2d 653 (CA 1-1959), cert. den., 361 US 902; *Garland vs Alaska S. S. Co.*, 194 FS 792 (DC Alaska-1961). Other courts have held the *Fourco* rationale applicable to other special venue provisions: *Zonolite Co. vs United States*, 209 FS 597 (WD Pa.-1962) (suits to enforce or set aside ICC orders); *R. J. Coulter Funeral Home vs National Burial Ins. Co.*, 192 FS 522 (ED Tenn.-1960) (Clayton Act suits); *United Transit Co. vs United States*, 158 FS 856 (MD Tenn.-1957).

[3] When the Jones Act was adopted, the Senate proposed a broad FELA-type provision laying venue wherever the defendant did business. The House objected, whereupon the present limited venue provision was incorporated in the Act. See Senate Report 573, 66th Cong., 2d Sess., p. 23; House Reports 1093 (p. 21), 1102 (p. 35) and 1107 (pp. 19, 32), 66th Cong., 2d Sess.

In view of the large volume of Jones-Act cases, it is obviously of great practical importance to the expeditious disposition of litigation by the lower federal courts, that the inter-Circuit conflict as to proper venue in these cases be resolved promptly.[4]

Conclusion

Since this Court granted certiorari in 1957 in the *Fourco* case, to resolve the conflict as to the impact of the 1948 revision of the Judicial Code on special-venue provisions, a new divergence of opinion among the Circuits, and also among district courts, has arisen. Prompt resolution of this divergence is essential to proper judicial administration.

It is accordingly respectfully submitted that certiorari should be granted herein.

Eberhard P. Deutsch,
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Deutsch, Kerrigan & Stiles,
René H. Himel, Jr.,
Joaquin Campoy,
William S. Stone,
Of Counsel

October, 1965

[4] It is estimated that an aggregate of 3192 Jones Act cases will have been filed in all United States district courts in 1965. Of these, 1026 will have been filed in district courts within the Fifth Circuit.

APPENDIX

OPINION OF THE COURT OF APPEALS

Before WISDOM and GEWIN, Circuit Judges, and BREWSTER, District Judge.

GEWIN, Circuit Judge: The appellee instituted this civil action in the District Court for the Southern District of Florida to recover damages for injuries he received while employed in the capacity of a seaman aboard the vessel S.S. "PURE OIL," owned and operated by The Pure Oil Company. His complaint proceeded on two theories: (1) negligence under the Jones Act, 46 U.S.C.A. § 688, and (2) breach of the shipowner's duty to provide a seaworthy vessel. The company moved to transfer the case to the Northern District of Illinois on the ground that venue was not properly laid in the Southern District of Florida.[1] The trial court denied the motion, but certified the question under 28 U.S.C.A. § 1292(b), and this interlocutory appeal ensued.

The relevant provision of the Jones Act, 46 U.S.C.A. § 688, provides as follows:

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer *resides or in which his principal office is located.*" (Emphasis supplied.)

The parties stipulated that The Pure Oil Company "has transacted a substantial amount of business in Florida and

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[1] The special venue requirements of the Jones Act must be satisfied where a civil action is predicated on both unseaworthiness and Jones Act theories, even though the provisions of the general venue section would apply in a civil action based solely on unseaworthiness. See Branic v. Wheeling Steel Corp. (3 Cir. 1945) 152 F.2d 887.

the Southern District of Florida, was doing substantial amounts of business in the Southern District of Florida at the time of the commencement of this action, and hopes to continue doing substantial business therein. . . ." The company also filed an uncontradicted affidavit which states that it is incorporated in Ohio and maintains its principal office in Cook County, Illinois. The sole question for decision is whether the provision of the Jones Act quoted above enables an injured seaman to sue his employer corporation wherever the employer does business or whether his choice of forums is limited to the districts in which the employer is incorporated and maintains its principal office.

Although the quoted provision of the Jones Act literally speaks of "jurisdiction," it was early held to refer only to proper venue. *Panama R.R. v. Johnson*, 265 U.S. 375, 68 L.Ed. 748 (1924). Hence, the privilege need not be given effect unless the defendant insists upon it. *E.g., Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 84 L.Ed. 167 (1939); *Panama R.R. v. Johnson, supra;* Wright Federal Courts 128 (1963). It is established that, in the absence of a statutory directive to the contrary, the "residence" of a corporation for venue purposes is limited to the state of its incorporation. See *Suttle v. Reich Bros. Constr. Co.*, 333 U.S. 163, 92 L.Ed. 614 (1948); *Shaw v. Quincy Mining Co.*, 145 U.S. 444,450, 36 L.Ed. 768,771 (1892).

The appellee makes two arguments in support of the district court's denial of the motion to transfer, the first of which can be disposed of in short order. According to

appellee, the Jones Act was passed in 1920 to expand and liberalize the relief afforded to seamen for injuries they sustained in their employment. Instead of devising separate standards to be applied in personal injury suits by seamen, Congress adopted the expedient of incorporating by reference the more detailed provisions which govern the liability of railroads to their employees.[2] Therefore, appellee argues that the special venue provisions of the Federal Employers Liability Act, under which venue against Pure Oil would undoubtedly be proper in the instant case,[3] are applicable to a civil action under the Jones Act. However, this argument does not adequately accommodate the well-recognized and eminently logical canon of statutory construction that the specific provisions of a statute control exclusively over the broader and more general provisions of another statute which may relate to the same subject matter in the absence of a clear manifestation to the contrary by the legislature. See *Bulova Watch Co. v. United States*, 6 L.Ed.2d 72, 76, (1961); *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222,228-29, 1 L.Ed.2d 786,790-91 (1957). As one court has stated, "The short answer to [appellee's] argument is that Congress has seen fit to impose different venue requirements in Jones Act cases. To now hold that the venue requirements under the Federal Employers' Lia-

[2] "[A]nd in such action *all* statutes of the United States *modifying or extending* the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ." 46 U.S.C.A. § 688 (Emphasis supplied.)

[3] The FELA contains much broader venue provisions than those of the Jones Act. Under that statute, venue is proper in the district where the defendant resides, where the cause of action arose, or where the defendant is "doing business" at the time of the commencement of the action. 45 U.S.C.A. § 56.

bility Act are controlling would negate the plain language of 46 U.S.C. § 688." *Rodriquez v. United Fruit Co.*, 236 F. Supp. 680,682 (E.D.Va. 1964). We are not persuaded to hold otherwise merely because the two other provisions of 45 U.S.C.A. § 56 have been held applicable in Jones Act cases.[4] Neither of the subjects covered by those provisions is dealt with specifically in the Jones Act, and they would thus be fairly covered by the general reference to the FELA. See *Panama R.R. v. Johnson*, 264 U.S. 375,392, 68 L.Ed. 748,755 (1924).[5]

Appellee makes a far more appealing argument, at least from the point of view of statutory construction, in its as-

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[4] The same section of the FELA which contains its venue provision also contains a provision fixing the limitation period for filing suits and a provision reserving to the state courts concurrent jurisdiction over FELA claims. Both these provisions were applied to the Jones Act in Engel v. Davenport, 271 U.S. 33, 70 L.Ed. 813 (1926). See also Cox v. Roth, 348 U.S. 207, 99 L.Ed. 260 (1955); Panama R.R. v. Vasquez, 271 U.S. 557, 70 L.Ed. 1085 (1926).

[5] Appellee also relies upon the decision of this Circuit in Arthur v. Compagnie Generale Transatlantique (5 Cir. 1934) 74 F.2d 662 as a justification for construing the venue provisions of the Jones Act as nonexclusive. In that case we held that the Jones Act's venue requirements were inapplicable to a suit in a federal court against a defendant incorporated in a foreign country. We do not deem this case controlling in the instant situation. Where, for example, an American seaman sues an alien corporation under the Jones Act for an injury which occurred in the territorial waters of the United States, the *Arthur* result would certainly be compelled as a practical necessity; otherwise, the venue provision of the Jones Act would effectively preclude the seaman from invoking any federal forum if the employer chose to raise his venue objection. Such was surely not the intention of the drafters of the Jones Act. Indeed, the Jones Act venue requirements have also been held inapplicable in state courts. Bainbridge v. Merchants & Miners' Transp. Co., 287 U.S. 278, 77 L.Ed. 302 (1932). We do not think that the *Arthur* case should be read as suggesting that the venue provisions of the Jones Act do not furnish the exclusive venue requirements in any circumstances. Clearly they apply to a domestic corporation such as we have in the instant case.

sertion that the definition of the term "residence" which was added to the general venue statute in 1948, 28 U.S.C.A. § 1391(c), should be read into the Jones Act venue requirements. Prior to 1948—and, indeed, at the time Congress enacted the Jones Act in 1920—the general venue statute was geared to the residence of either the defendant or, in diversity cases, the plaintiff as well. The residence of a corporation was uniformly restricted to the state of its incorporation, even in Jones Act suits. *E.g.*, *Burris v. Matson Nav. Co.* (S.D.N.Y. 1940) 37 F.Supp. 648. In the course of the general revision of the Judicial Code in 1948, Congress inserted subsection (c) into the general venue statute. That section provides as follows:

> "(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, *and such judicial district shall be regarded as the residence of such corporation for venue purposes.*" (Emphasis supplied.)

It is the last clause of that subsection which concerns us primarily, for if that phrase can be read as defining the residence of a defendant corporation for the purposes of the Jones Act's venue provisions, then the trial court properly denied Pure Oil's motion to transfer.

If section 1391(c) and the Jones Act venue provision are viewed together in light of the remedial purposes of the Jones Act, the most logical conclusion might well be that the general venue statute did expand the definition of residence in the Jones Act. In fact, all the courts which were faced with the question between 1948 and 1957 read

the Jones Act in light of the new concept of corporate residence embodied in section 1391(c).[6]

In 1957 however, the Supreme Court held that section 1391(c) did not define the residence of a corporate defendant in patent infringement litigation. *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 1 L.Ed. 2d 786 (1957). Since the decision in that case, most of the federal courts have concluded that its rationale foreclosed the application of section 1391(c) to Jones Act venue,[7] although a few have reached a contrary result.[8] The only other Circuit court which has confronted the issue in light of the *Fourco* case has read that decision as militating against the application of section 1391(c) to the Jones Act. *Leith v. Oil Transport Co.* (3 Cir. 1963) 321 F.2d 591. In addition, many courts have applied the *Fourco* rationale to other special venue statutes, holding that the provisions of the general venue section do not supplement those special statutes.[9]

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[6] See Hutchison v. Pacific-Atlantic S.S. Co. (9 Cir. 1954) 217 F.2d 384; Franklin v. Tomlinson Fleet Corp. (N.D. Ill. 1957) 158 F. Supp. 850; Phillips v. Pope & Talbot, Inc., (S.D.N.Y. 1952) 102 F. Supp. 51; Mincy v. Detroit & Cleveland Nav. Co. (S.D.N.Y. 1950) 94 F. Supp. 456; Neset v. Christensen (E.D.N.Y. 1950) 92 F. Supp. 78; Bounds v. Streckfus Steamers, Inc. (D.Del. 1950) 89 F. Supp. 242; Bagner v. Blidberg Rothchild Co. (E.D.Pa. 1949) 84 F. Supp. 973.

[7] Leith v. Oil Transport Co. (3 Cir. 1963) 321 F.2d 591; Barnes v. E.J. Platte Fisheries (N.D.Miss. 1964) 237 F. Supp. 390; Rodriquez v. United Fruit Co. (E.D. Va. 1964) 236 F. Supp. 680; Blanco v. Gulf Coast Transp., Inc. (W.D. La. 1964) 235 F. Supp. 197.

[8] Connolly v. Farrell Lines, Inc. (1 Cir.) 268 F.2d 653, *cert. denied,* 361 U.S. 902 (1959); Garland v. Alaska S.S. Co. (D. Alaska 1961) 194 F. Supp. 792. These decisions are of dubious precedent value, however, since neither opinion discusses or cites the *Fourco* case.

[9] *E.g.,* Zonolite Co. v. United States (W.D.Pa. 1962) 209 F. Supp. 597 (venue in suits to set aside or enforce ICC orders); United Transit Co. v. United States (M.D. Tenn. 1957) 158

Hence, a casual glance at the rather formidable array of authorities would suggest that the court in *Leith* was correct in its strict application of the *Fourco* result to suits under the Jones Act. Nevertheless, we must disagree with the Third Circuit's interpretation of the *Fourco* opinion.[10] While we certainly deem that opinion controlling, we think its rationale compels a result contrary to that reached in *Leith*.

The special venue statute to which the plaintiff in *Fourco* sought to apply section 1391(c) provided as follows:

> "Any civil action for patent infringement may be brought in the judicial district where the defendant *resides*, or where the defendant has committed acts of infringement and has a regular and

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F.Supp. 856 (civil actions against the United States); R.J. Coulter Funeral Home, Inc. v. National Burial Ins. Co. (E.D. Tenn. 1960) 192 F. Supp. 522 (special venue provisions of the Clayton Act). Generally, the commentators seem to regard the *Fourco* result as necessary in all situations where special venue statutes come into play. See 1 Barron & Holtzoff, Federal Practice & Procedure § 80, at 387 (1960); 1 Moore, Federal Practice ¶0.144. However, Professor Moore has criticized the *Fourco* opinion as unsound. See 1 Moore, Federal Practice ¶0.144[9], at 1632.

[10] We do not minimize the fact that *Leith* is diametrically opposed to the result reached in the instant case. However, it does seem appropriate to observe that the court in *Leith* was careful to point out in its statement of facts that the suit was filed in a Pennsylvania federal court, the plaintiff was a resident of Tennessee, the defendants were incorporated and maintained their principal places of business in Louisiana, they were not licensed to do business in Pennsylvania, and the accident occurred while the vessel was docked in the navigable waters of the Ohio River at Paducah, Kentucky. In the course of the opinion in *Leith*, the court made pointed reference to the facts mentioned: "It did not arise there; the plaintiff does not live there; the defendants are not incorporated there and do not maintain a place of business there." 321 F.2d at 594.

established place of business." 28 U.S.C.A. § 1400(b). (Emphasis supplied.)

That section was re-enacted in 1948 along with the general revision of the Judicial Code which resulted in the expanded definition of corporate residence in section 1391(c). When section 1400(b) was re-enacted, the word "residence" was substituted for the word "inhabitant," but the court concluded from an examination of the legislative history of section 1400(b) that no substantive change was intended by the change in wording. Furthermore, as indicated by the Supreme Court's own review of the reasons for the passage of the predecessor to section 1400(b) in *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561, 86 L.Ed. 1026 (1942), the special venue section applicable to patent infringement actions was intended as a restrictive measure, designed to place greater limits on venue in patent infringement suits than those which had previously applied under the general venue provisions then in force. The Supreme Court thus concluded:

> "In light of the fact that the Revisers' Notes do not express any substantive change [in § 1400(b)], and of the fact that several of those having importantly to do with the revision say no change is to be presumed unless clearly expressed, and no substantive change being otherwise apparent, we hold that 28 U.S.C. § 1400(b) made no substantive change from 28 U.S.C. (1940 ed.) § 109 as it stood and was dealt with in the Stonite case."

353 U.S. at 227-28, 1 L.Ed.2d at 790.

We do not feel that the Supreme Court intended to foreclose the application of the expanded concept of a corporate defendant's residence to all special venue statutes. Our reading of *Fourco* convinces us that the court contemplates an analysis of the relationship of section 1391(c) to special venue statutes in light of the history and purpose of the special provisions.[11] As indicated above, the Court in *Fourco* focused sharply on the congressional intent that Section 1400(b) have a restrictive effect. Applying this broad principle to the specific venue statute which applies to Jones Act suits, we hold that section 1391(c) furnishes the definition of corporate residence for that statute. When the Jones Act was passed in 1920, the general venue section restricted proper venue over a corporate defendant to the district of incorporation. Hence, the inference is clear that the special venue requirements of the Jones Act, in contradistinction to those relating to patent infringement suits, were expansive and afforded the seaman an additional federal forum in which to present his Jones Act claim—the district of the principal office of his employer. Citation of authority is unnecessary for the proposition that the Jones Act is remedial legislation which is to be construed liberally in favor of enlarging the remedies of the injured seaman. We think it is also significant that the consent doctrine established in *Neirbo Co. v. Bethlehem Shipbuilding Corp.* 308 U.S. 165, 84 L.Ed. 167 (1939), under which a corporate defendant is deemed to have acceded to venue in the federal

[11] Such an approach has also been suggested by commentators. See, *e.g.*, Note, Venue in Private Antitrust Suits, 37 N.Y.U. L. Rev. 268 (1962); Recent Decision, 62 Mich. L.Rev. 897 (1964) (criticizing the result in *Leith v. Oil Transport Co., supra*).

courts of a state by appointing an agent and submitting to the jurisdiction of the state courts, was applied to Jones Act suits.[12] *Antonana v. Ore S.S. Corp.*, (S.D.N.Y. 1956) 144 F. Supp. 486; *Bennett v. Standard Oil Co.* (D.Md. 1940) 33 F. Supp. 871; see 1 Moore's Federal Practice ¶0.142[5-3], at 1492. The courts, on the other hand, have consistently refused to apply *Neirbo* to defendants in patent infringement litigation. *E.g., American Chemical Paint Co. v. Dow Chemical Co.* (6 Cir. 1947) 161 F.2d 956; *Bulldog Elec. Prods. Co. v. Cole Elec. Prods. Co.* (2 Cir. 1943) 134 F.2d 545. In light of these considerations, we do not think the result reached in *Fourco* is appropriate in the instant case.

Indeed, if a broad reading is not accorded the Jones Act, its remedial purpose may be thwarted by working a great inconvenience on the injured seaman who wishes to present his Jones Act claims in the federal court. In some cases, requiring the seaman to bring his action far from his home might deter his pressing his claims at all because of the prohibitive cost of transporting witnesses and conducting the trial in a distant forum. No greater

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[12] We note that the *Neirbo* doctrine could conceivably apply in the instant case, but the record is inadequately developed on the question. The parties stipulated that the defendant is "registered with the Secretary of State to do business in the State of Florida." Registration may refer to the statutory scheme embodied in Fla. Stat. Ann., §§ 47.34, 47.36, and 47.43, under which a foreign corporation must designate an office where process may be served or an agent on whom process may be served as a prerequisite to the maintenance of actions in the state courts. The *Neirbo* question was apparently not raised or considered in the district court. Furthermore, we cannot determine from the stipulations whether there has been such compliance with the Florida statutes concerning qualification to do business that *Neirbo* could be invoked. See Moss v. Atlantic Coast Line R.R. (2 Cir. 1945) 149 F.2d 701; Donahue v. M. A. Henry Co. (S.D.N.Y. 1948) 78 F.Supp. 91.

burden is imposed on the employer than would exist in any other civil action which he might be called upon to defend. Furthermore, if the employer were sued in a forum inconvenient to him, he could invoke the transfer provisions of 28 U.S.C.A. § 1404(a). A restrictive reading of the Jones Act venue provisions, on the other hand, would severely circumscribe the seaman plaintiff's remedies unless, of course, he institutes suit in a state court, where the Jones Act venue requirements would be inapplicable. See *Bainbridge v. Merchants & Miners' Trans. Co.*, 287 U.S. 278, 77 L.Ed. 302 (1932). An injured seaman has the alternative of filing a suit in admiralty in which he seeks relief under the substantive provisions of the Jones Act. In such a situation the venue provisions of the Jones Act would probably not restrict his choice of forums, see, *e.g.*, *Brown v. C. D. Mallory & Co.* (3 Cir. 1941) 122 F.2d 98; 2 Norris, The Law of Seamen § 675, but the plaintiff would have to forego his right to trial by jury.

We think the Jones Act's venue provision was meant to provide a convenient federal forum for the satisfaction of the seamen's personal injury claims against his employer. It is consonant with these purposes to give the term "residence" as used in the Jones Act an expansive interpretation, and we do not think such a reading of the Jones Act does violence to the rationale of *Fourco Glass Co. v. Transmirra Prods. Corp.*[13] Both the *Fourco* opinion

[13] Our construction of the special venue provisions of the Jones Act does not render totally meaningless the second predicate for venue in that section. It would still operate to provide an additional forum in which an injured seaman could sue an individual employer; venue as to such an employer would be proper in the district in which his principal office is located as well as the district in which he maintains his residence.

and the patent infringement statute adhere to the fundamental principle that an action may be brought against a corporation not only where the corporation resides, but also where the offending corporation has committed acts of infringement (the wrong) and has a regular and established place of business. In the very beginning of the *Fourco* opinion the Supreme Court pointedly observes that the trial court concluded that "there had been no showing of any acts of infringement in the district of suit . . ." In addition to the stipulated facts mentioned above, the complaint in the instant case alleges that the plaintiff is a resident citizen of Florida, that he was employed in Florida by the defendant in the capacity of seaman, that the defendant is a corporation doing business in the State of Florida, and that the alleged injury arose out of the employer-employee relationship. It is further stipulated that the vessels of the defendant operate in the ports of Florida and in the Southern District, that it sells its products in Florida in that district, and that the defendant "is registered with the Secretary of State to do business in the State of Florida."

There is a shocking inconsistency in a rule of law which permits a corporation to maintain a regular, established place of business in the district in question, transact a substantial amount of business there both before and after the event about which the plaintiff complains and at the time the suit is filed with the expressed intention to continue doing business in such locale, but allows the corporation to insist on a trial of the factual issues in the district in which it is incorporated or in which its principal office

is located. To do so would authorize it "to run with the hare and hold with the hound."

In the doing of substantial business in an area a corporation becomes a part of the mainstream to commerce which affects the welfare of many people including those it may negligently injure. It receives the benefits which normally come to those engaged in business in the area. The right to choose to do substantial business in a particular locality does not have to be exercised. However, once the choice is made it would be unjust to permit the offending corporation to continue its operations, in the course of which it also may be creating liabilities, and at the same time to grant it complete immunity from those liabilities by shielding it with a carapace of technical venue construction. Usually the witnesses, the evidence, and all the facts leading to the ultimate inquiry as to the truth could be presented more effectively and with less inconvenience than would be possible at the residence or principal place of business of the corporation, often a substantial distance from the place of the wrong. Such a principle cuts two ways and may serve both plaintiff and defendant alike.

We note in reaching this result we must assume that the purpose of the second clause of section 1391(c) was to define the residence of a corporate defendant for purposes other than those delineated in section 1391(a) and (b). Such an assumption appears to comport with the wording of the section. Of course, there is no problem of statutory construction present in the instant case which is comparable to that treated in *Robert E. Lee & Co. v. Veatch* (4 Cir. 1961) 301 F.2d 434, where the question of the applicability of the definition to a corporate plaintiff arose.

Indeed, the difficulty of applying section 1391(c) to a corporation suing as plaintiff may be, in part at least, accountable for the refusal of courts to apply that section to certain other special venue statutes, such as 28 U.S.C.A. § 1398, which relates to review of ICC orders, and 28 U.S.C.A. § 1402, which governs venue in civil actions against the United States.

For the foregoing reasons, we think the district court's denial of the motion to transfer was correct. As we read the Jones Act, it now provides that venue with respect to a corporate employer defendant is proper in any district in which it is "incorporated or licensed to do business or is doing business." The denial of the motion to transfer is AFFIRMED, and the case is REMANDED to the district court for further proceedings.

JUDGMENT OF THE COURT OF APPEALS

Before WISDOM and GEWIN, Circuit Judges, and BREWSTER, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the denial of the motion to transfer in this cause be, and the same is hereby affirmed, and that this cause be and it is hereby remanded to the District Court for further proceedings in accordance with the opinion of this Court.

It is further ordered and adjudged that the appellant, The Pure Oil Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

June 16, 1965

SUPREME

No.

THE STATE OF CALIFORNIA,

Petitioner,

vs.

PASCUAL [illegible],

Respondent.

RESPONDENT'S BRIEF IN [illegible]

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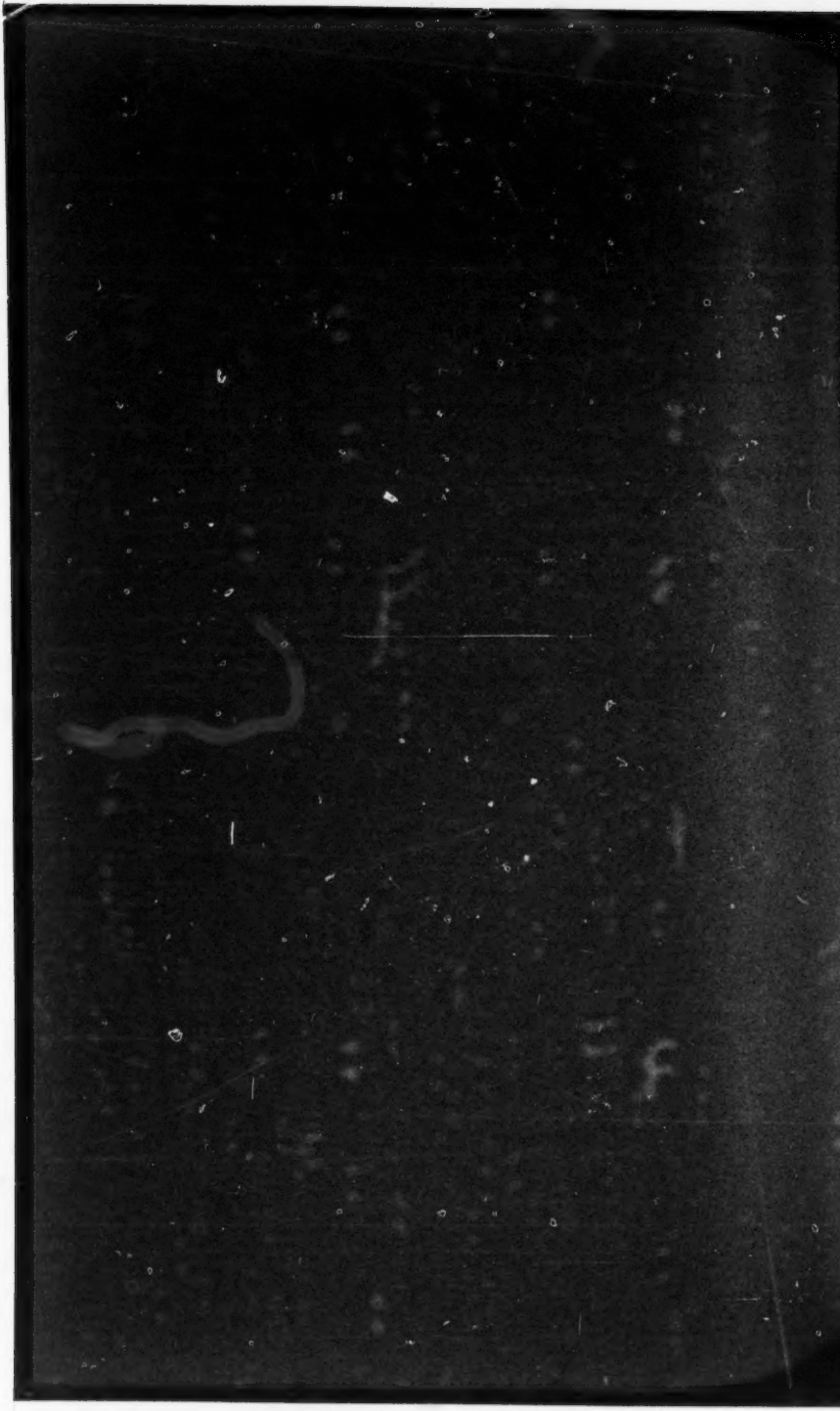

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No._____

THE PURE OIL COMPANY,

Petitioner,

versus

PASCUAL SUAREZ,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW AND JURISDICTION

The District Judge's Order of March 6, 1964, is not reported. The opinion of the Court of Appeals for the Fifth Circuit, affirming the order of the District Court, is reported at 346 F.2d 890, and is set out in full in Petitioner's appendix. Jurisdiction of this Court is asserted under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the 1920 venue definition of "residence" of a corporate shipowner under the Jones Act, 46 U.S.C. 688, shall continue as a common law definition (the state of incorporation), or submit to

the 1948 Congressional definition as enacted in the General Venue Statute, 28 U.S.C. 1391(c), providing that for venue purposes a corporation's residence shall be any judicial district in which it is doing business, as held by the Fifth Circuit?

STATUTES INVOLVED

46 U.S.C. 688:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. **Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.**" (Emphasis supplied).

28 U.S.C. 1391(c):

"A corporation may be sued in any judicial district in which it is incorporated or licensed to do

business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

ARGUMENT

Respondent does not minimize the fact that the result reached by the Fifth Circuit is diametrically opposed to the result reached by the Court of Appeals for the Third Circuit in **Leith v. Oil Transport Co.**, 321 F.2d 591 (1963).

However, the Fifth Circuit made sufficient distinction in the fact situations of the two cases to warrant a denial of this petition. The Third Circuit noted in its opinion in **Leith** that the only contacts the law suit had in the Western District of Pennsylvania were the presence of one of the Defendant's barges, making it amenable to process by service of a summons and complaint on the master of the barge.

In the cause at bar, it is noted that Pat Suarez was born in Tampa, Florida, and lived there all of his life; he was employed in Florida, and the Defendant engages in substantial business in Florida, and is registered with the Secretary of State of Florida to do business in Florida.

Suarez filed his law suit in Florida, with its now famous current trial calendars. Petitioner moved to transfer the case to Chicago, with its backlog of six to nine years.

Neither Suarez nor his case have any connection with Chicago, except that his employer chooses to main-

tain its principal office in Chicago, the sole ground forwarded for transfer of venue to Chicago. The motion was denied.

Congress never intended that a seaman chase his employer 2,000 miles to file a law suit, and bring with him his witnesses, doctors and lawyers to fight for a recovery.

If, as contended by Respondent, Congress ever created such an obviously unintended result, it was just as obviously corrected 1948 by enactment of the General Venue Statute, creating a new definition of residence for venue purposes. The statutory definition, 28 U.S.C. 1391(c), supersedes the common-law definition of corporate residence. **Suttle v. Reich Bros. Constr. Co.**, 333 U.S. 163 (1948); **Shaw v. Quincy Mining Co.**, 145 U.S. 444 (1892).

CONCLUSION

It is respectfully submitted that the Court of Appeals for the Fifth Circuit was correct in holding that the previously undefined term "residence" for venue purposes under the Jones Act is now defined by the General Venue Statute, to further enforce the beneficial purpose of the Act as remedial legislation.

Pat Suarez should be permitted to get his case to a jury just as soon as possible, in the most expedient manner available.

The Petition should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of Respondent's Brief in Opposition was mailed to Eberhard P. Deutsch, Esq., 1700 Hibernia Bank Building, New Orleans, La., Attorney for Petitioner, this_____day of November, 1965.

_____

ARTHUR ROTH

Supreme Court of the United States

FEB 7 1966
JOHN F. DAVIS, CLERK

OCTOBER TERM, 1965

No. 692

THE PURE OIL COMPANY,
Petitioner

versus

PASCUAL SUAREZ,
Respondent

BRIEF FOR PETITIONER

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Supreme Court of the United States

OCTOBER TERM, 1965

No. 692

THE PURE OIL COMPANY,
Petitioner

versus

PASCUAL SUAREZ,
Respondent

BRIEF FOR PETITIONER

Opinion Below and Jurisdiction

The District Court rendered no opinion. The opinion of the Court of Appeals is reported at 346 F2d 890. The judgment of the Court of Appeals is dated June 16, 1965, and was entered on the same date. Rehearing was denied on September 7, 1965. Petition for certiorari was filed on October 23, 1965, and certiorari was granted January 17, 1965, ... US ...., 34 US Law Week 3245. Jurisdiction of this Court lies under 28 USC 1254(1).

Statutes Involved

46 USC 688: "Any seaman who shall suffer personal injury in the course of his employment may,

at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. *Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.*" (Emphasis supplied.)

28 USC 1391(c): "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

Question Presented

Whether venue under the Jones Act, 46 USC 688, is limited to "the court of the district in which the defendant employer resides (*i.e.*, is incorporated) or in which his principal office is located", as explicitly provided in the special-venue provision of the Act as construed judicially prior to 1948, and as

held since 1948 by the Third Circuit and several district courts; or whether such venue was extended by the general venue provision [28 USC 1391(c)] of the 1948 revision of the Judicial Code, to include districts in which the employer merely does business, as held by the Fifth Circuit in this case.

Statement of the Case

Petitioner, The Pure Oil Company, is an Ohio corporation, with its principal office in Palatine, Illinois. R 6, 13.

Respondent, a seaman and member of the crew of the S/S *Pure Oil*, having been injured aboard his vessel on the high seas, filed a civil action under the Jones Act against petitioner, his former employer, in the District Court for the Southern District of Florida, a State in which petitioner does business. R 2-3, 7.

Petitioner promptly moved to transfer the action to the district in which it has its principal office, the Northern District of Illinois, Eastern Division. R 5-6.

After hearing argument, the District Court entered an order refusing the transfer on the ground that venue under the Jones Act lies "in any district where the defendant is doing business". R 8.

An interlocutory appeal was granted from the order, which was affirmed by the Court of Appeals. R 10-11, 27.

Summary of Argument

When the Jones Act was passed, Congress deliberately rejected a proposal that venue of actions thereunder would lie in any district in which a corporate defendant is doing business, and provided instead explicitly that venue of such actions is restricted to the district in which a corporate defendant is incorporated or has its principal office.

When the Judicial Code was revised in 1948, to provide that any district in which a corporation is doing business shall be deemed its "residence" for general venue purposes, Congress made no change in the special restrictive-venue provision of the Jones Act.

A policy argument as to considerations deemed to justify a liberalization of the venue provision of the Jones Act should properly be addressed to Congress, not to the courts.

Argument

In 1920, the Senate proposed an amendment to HR 10378 (the Merchant Marine Act) to include a provision (the Jones Act) giving seamen and their representatives a right of action for personal injury and death. The Senate amendment provided that all statutes conferring or regulating the right of action for death in the case of railway employees (the

Federal Employers' Liability Act) should be applicable to seamen's actions. *Senate Report 573,* 66th Cong., 2d Sess., p. 23. The FELA had been amended in 1910 to lay venue of actions thereunder wherever the defendant-employer was doing business. Act of April 5, 1910, c. 43, §1, 36 Stat. 291.

The House accepted the Senate's amendment, but subject to the proviso that the following sentence be added thereto: "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." The Senate acceded to this proviso in conference (*House Reports 1093,* p. 21, *1102,* p. 35, *1107,* pp. 19, 32, 66th Cong., 2d Sess.), and the added sentence is still part of the Jones Act (page 2 *supra*).

The words "reside" and "residence" in federal venue statutes had, until 1948, always referred, in the case of a corporation, to the state of its incorporation. *Suttle vs Reich Bros. Co.,* 333 US 163 (1948), and cases cited therein.

In rejecting inclusion by reference, of the FELA's doing-business venue test, and adding a sentence restricting venue to the district of the defendant's residence or principal office, Congress expressly and clearly limited Jones-Act venue to the district of principal office or incorporation, in the case of a

corporate defendant, as conceded by the Fifth Circuit below (346 F2d at 892, R 16-17).[1]

In 1948, the revision of the Judicial Code expanded the general venue provision thereof by providing that any district in which a corporation is incorporated or licensed to do business, or is doing business, shall be regarded as its residence for venue purposes. 28 USC 1391(c). However, no change was made in the special restrictive-venue provision of the Jones Act.

In *Fourco Glass Co. vs Transmirra Products Corp.*, 353 US 222 (1957), this Court held that the 1948 expansion of the general venue provision of the Judicial Code, did not change the special provision of that Code restricting venue in patent suits to the district of incorporation of corporate defendants.[2]

[1] "Prior to 1948—and indeed, at the time Congress enacted the Jones Act in 1920—the general venue statute was geared to the residence of either the defendant or, in diversity cases, the plaintiff as well. The residence of a corporation was uniformly restricted to the State of its incorporation, even in Jones Act suits." 346 F2d at 893, R 19. And see *Leith vs Oil Transport Co.*, 321 F2d 591 (CA 3-1963); *Smith vs Nicholson Universal SS Co.*, 42 FS 1001 (WD NY-1941); *Burris vs Matson Nav. Co.*, 37 FS 648 (SD NY-1940); *Stein vs Standard Oil Co.*, 36 F2d 258 (SD NY-1929); *Peters vs Detroit & Cleveland Nav. Co.*, 24 F2d 454 (WD NY-1927); *Caceres vs US Shipping Board Emergency Fleet Corp.*, 299 Fed. 968 (ED NY-1924); *Leon vs US Shipping Board Emergency Fleet Corp.*, 286 Fed. 681 (SD NY-1921).

[2] In *Bulova Watch Co. vs United States*, 365 US 753 (1961), this Court similarly held that the general provisions of the 1948 revision of the Judicial Code as to interest on judgments, do not override the specific provision of the Internal Revenue Code as to interest on tax-refund judgments, especially since the Congressional history of the Revenue-Code provision, like that of the Jones Act, reveals Congressional rejection of the rule later embodied in the 1948 revision.

This conclusion was reached despite the fact that, as part of the 1948 revision of the Judicial Code, the patent-venue provision of that Code was changed to refer to the district where the defendant "resides" (instead of the district of which the "defendant is an inhabitant"), by the same Act which expanded the definition of corporate residence in section 1391(c) of the Judicial Code to include districts in which the corporation is licensed to do, or is doing, business. This Court reasoned that no changes of law or policy were made by the 1948 revision "unless an intent to make such changes is clearly expressed". 353 US at 227.[3]

The *Fourco* conclusion is applicable *a fortiori* to the Jones Act's special venue provision, which, with other special venue provisions in other statutes, was deliberately left unchanged when the Judicial Code was revised. To hold, as the Fifth Circuit has done in this case, that the expanded definition of corporate residence in section 1391(c) of the Judicial Code is to be read into the word "resides" in the Jones-Act venue provision, would do more than merely modify the meaning of a word in that provision. It would repeal the entire restrictive-venue provision carefully included in the Jones Act by Congress in 1920, leaving corporate venue to be governed by the broad

[3] One of the Court-of-Appeals decisions disapproved by this Court in *Fourco* was *Dalton vs Shakespeare Co.*, 196 F2d 469 (1952), in which the Fifth Circuit made the same expanded-venue holding as to patent cases, that it made in the case at bar as to Jones-Act suits. See 353 US at 224, footnote 3.

doing-business test of the FELA, as once proposed in, but ultimately rejected by, Congress.[4]

Any such construction of the 1948 revision is thus precluded by the rule against implied repeal of statutory provisions, *Mercantile National Bank vs Langdeau,* 371 US 555, 565 (1963), as well as by the principle that "where the purpose of a special (venue) rule is to limit rights, a sound basis exists for stating that the more general provision is inapplicable". Comment, *Venue in Private Antitrust Suits,* 37 NYU Law Review 268, 274 (1962); and see *Missouri vs Ross,* 299 US 72, 76 (1936).

Since the *Fourco* decision, all courts (except the Fifth Circuit) which have considered its application, have held that the general expanded-venue provision of section 1391(c) has no application to the unchanged special-venue provisions of the Jones Act[5] and other statutes,[6] as have the leading text-writers on federal

[4] As noted above, Congress amended the FELA in 1910 to extend venue of actions thereunder to any district in which the defendant is doing business (Act of April 5, 1910, c. 143, §1, 36 Stat. 291); but Congress has made no such change in the venue provision of the Jones Act.

[5] *Leith vs Oil Transport Co.,* 321 F2d 591 (CA 3-1963); *Barnes vs E. J. Platt Fisheries,* 237 FS 390 (ND Miss.-1964); *Rodriquez vs United Fruit Co.,* 236 FS 680 (ED Va.-1964); *Blanco vs Gulf Coast Transp.,* 235 FS 197 (WD La.-1964). *Cf. Connolly vs Farrell Lines,* 268 F2d 653 (CA 1-1959), cert. den., 361 US 902; *Hutchison vs Pacific-Atlantic SS Co.,* 217 F2d 384 (CA 9-1954); *Garland vs Alaska SS Co.,* 194 FS 792 (DC Alaska-1961).

[6] *Roberts Bros. vs Kurtz Bros.,* 231 FS 163 (DC NJ-1964) (Clayton-Act suits); *Zonolite Co. vs United States,* 209 FS 597 (WD Pa.-1962) (suits to enforce or set aside ICC orders); *R. J. Coulter Funeral Home vs National Burial Ins. Co.,* 192 FS 522 (ED Tenn.-1960) (Clayton-Act suits); *Kaeppler vs James H. Matthews & Co.,* 180 FS 691 (ED Pa.-1960) (Clayton-Act suits); *United Transit Co. vs United States,* 158 FS 856 (MD Tenn.-1957) (tax-refund suits).

practice. 1 *Moore's Federal Practice* (2d ed.) 1602, 1652, ¶ ¶ 0.144[1], 0.144[13.-4]; 1 Barron and Holtzoff, *Federal Practice and Procedure* (1960) 387.

The single criticism[7] of application of *Fourco* to Jones-Act cases has been based, as in the Fifth Circuit's opinion herein, mainly on grounds of policy which, "however appealing, are addressed to an inappropriate forum, and . . . ought to be made to the Congress and not to the Courts". *United Steelworkers vs Bouligny*, 382 US ...., 34 US Law Week 4019, 4021 (1965).

If presented with such a policy argument, and with such countervailing considerations as arise from forum shopping and docket congestion in metropolitan centers, Congress might well make no change in the restricted venue provision of the Jones Act, or it might perhaps make some change therein other than full-scale adoption of the rule of section 1391(c). The decision is, in any event, one for Congress, and not for the courts.

[7] Note, 62 Michigan Law Review 897 (1964).

Conclusion

It is respectfully submitted that the judgment below should be reversed, and the cause remanded to the District Court for transfer.

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February, 1966

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JOHN F. DAVIS, CL

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 692

THE PURE OIL COMPANY,

Petitioner,

versus

PASCUAL SUAREZ,

Respondent.

RESPONDENT'S BRIEF

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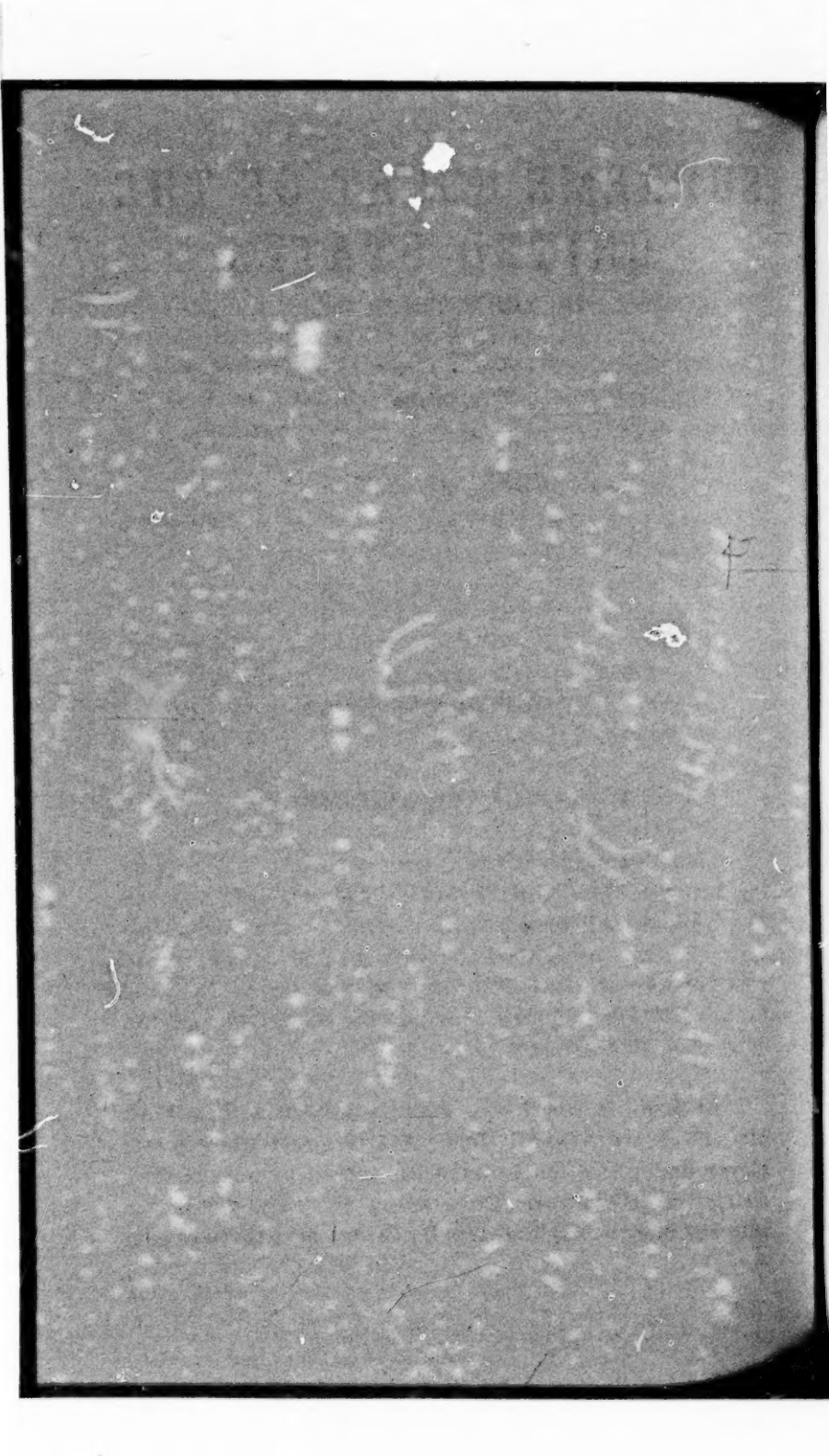

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

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THE PURE OIL COMPANY,

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Respondent.

RESPONDENT'S BRIEF

RESPONDENT'S ARGUMENT

This Court granted certiorari with a conflict existing between the Third Circuit on the one side and the First, Fourth, Fifth and Ninth Circuits on the other, with a similar division among the various District Courts, in construction of the application of the General Venue Statute, 28 U.S.C. 1391(c), to the venue provision of the Jones Act, 46 U.S.C. 688.

At issue is whether a merchant seaman may avail himself of the General Venue Statute, and sue his employer under the Jones Act, with a trial by jury in any district of the United States where the employer transacts business; **or,** should the Jones Act be narrowly con-

strued so as to exclude application of the General Venue Statute requiring the seaman to either, (1) forego a jury trial by suing on the admiralty side of the Federal Court; or, (2) have his jury trial in a distant district of the employer's choice; or, (3) have a jury trial in a state court, which would be hampered by complicated discovery procedures, and non-availability of 28 U.S.C. 1916.

The narrow, harsh construction has been followed by the Third Circuit. **Leith v. Oil Transport Co.**, 321 F.2d 591 (1963).

Criticized by the Third Circuit in **Leith** for their more practical approach are, **Hutchison v. Pacific - Atlantic S.S. Co.**, 217 F.2d 384 (9th Cir. 1954); **Connolly v. Farrell Lines**, 268 F.2d 653 (1st Cir.), cert. denied, 361 U.S. 902 (1959). The Fifth Circuit herein sharply disagreed with the Third Circuit's **Leith** holding.

Since the Court granted certiorari on January 17, 1966, there has been reported from the Fourth Circuit an opinion reaching the same result as reached herein by the Court below. **Fanning v. United Fruit Co.**, 34 U.S. Law Week, 2384 (4th Cir., Jan. 4, 1966).

After stating the shipowner's reliance on **Fourco Glass Co. v. Transmirra Products Corp.**, 353 U.S. 222 (1958), opposing application of the General Venue Statute to the Jones Act, the Fourth Circuit, through Senior Circuit Judge Sobeloff, held:

> "Since the 1957 Fourco decision two courts of appeals have passed on the question presented here. The Third Circuit, in **Leith v. Oil Trans-**

port Co., 321 F.2d 591 (1963) held that Fourco compels a narrow reading of the Jones Act venue provision, unaffected by the liberal venue provisions of section 1391(c). The Fifth Circuit, however, in **Pure Oil Co. v. Suarez**, 346 F.2d 890 (1965), refused to follow the Leith holding, applied the definition of residence contained in section 1391(c), and treated Fourco as limited to a construction of the venue provision of the patent infringement statute. ***

"After full consideration of the competing arguments we favor the Fifth Circuit's interpretation. ***

"The Fourco decision does not hold that section 1391(c) must yield automatically in every instance. Rather, the Supreme Court, examining the purposes of the special venue provision contained in the patent infringement statute, determined that applying the general venue statute would not be consistent with the congressional purpose in enacting the special venue provision. ***

"Those decisions of the lower federal courts after 1957, which applied the Fourco rationale to Jones Act venue, misconceived, we think, the thrust of that decision. Applying the Fourco doctrine in Jones Act cases results in an unwarranted withdrawal of a convenient forum previously (from 1948 to 1957) available to seamen for the prosecution of their Jones Act claims. We find nothing to compel an extension of Fourco to situa-

tions not in contemplation when that case was decided.

"The Jones Act with its venue provision has a history distinctly different from that of the patent infringement statute. Consistently, the Supreme Court has reiterated that the purpose of the Jones Act was to enlarge admiralty's protection of seamen and that its terms should be interpreted to benefit them. See Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942); Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939). It seems wholly opposed to the purposes of the Jones Act to construe its venue provision more narrowly than the general venue statute, and thus to afford the defendant-employer in a Jones Act suit a means of escape that would not be available to it in a diversity suit. To limit an injured seaman's access to the federal courts by a narrowing construction of the Jones Act venue provision would in this and many other cases work an emasculation of the statute, depriving its intended beneficiaries of the federal remedy made available to them by Congress."

The venue provisions of the Jones Act have never been given narrow, strict, literal interpretation from the first consideration of the Act by this Court:

Panama R.R. v. Johnson, 264 U.S. 375 (1924), where this Court held the jurisdictional sentence referred only to venue.

Bainbridge v. Merchants & Miners Transport Co.,

287 U.S. 278 (1932), holding that the venue provisions of the Act do not apply to suits in state courts brought under the concurrent jurisdictional provision of 45 U.S.C. 56, 28 U.S.C. 1445.

Arthur v. Compagnie Generale Transatlantique, 74 F.2d 662 (5th Cir. 1934), in which it was held that the venue privileges of Act could not be asserted by an alien employer.

Branic v. Wheeling Steel Corp., 152 F.2d 887 (3rd Cir. 1945), holding the venue provisions do not apply to actions commenced on the admiralty side of the Federal Courts.

The seamen have as much right to sue their employers in the most convenient forum available as, for instance, Congress gave to victims of negligent trucking companies. The General Venue Statute was enacted as remedial legislation for the convenience of plaintiffs. It should be liberally construed to accomplish the Congressional intent. Exclusion of its application to the Jones Act would merely open a broad highway for all corporate defendants to travel on in marshalling forces to oppose its application to general litigation and nullify the intent of Congress in its 1948 revision of the Judicial Code. This would seem to be the course urged upon this Court by the Petitioner. The courts would soon be swamped with motions to transfer cases to distant courts because corporate defendant would readily avail themselves of the argument forwarded by the Petitioner herein that the General Venue Statute does not apply to any litigation not affirmatively provided for by Congress. This construction of remedial legislation is unwarranted.

CONCLUSION

It is respectfully submitted that upon Argument, the opinion of the Court of Appeals for the Fifth Circuit be affirmed.

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Supreme Court of the United States

OCTOBER TERM, 1965

No. 692

THE PURE OIL COMPANY,
Petitioner

versus

PASCUAL SUAREZ,
Respondent

REPLY BRIEF FOR PETITIONER

Respondent's brief relies on the Fourth Circuit's as-yet unreported opinion in *Fanning vs United Fruit Co.* (January 4, 1966),* which follows the holding of the Fifth Circuit in the case at bar, and rejects the contrary holding of the Third Circuit in *Leith vs Oil Transport Co.*, 321 F2d 591.

Like the opinion below of the Fifth Circuit, that of the Fourth Circuit in *Fanning* is based on the asserted inequity of a policy which would limit Jones-Act venue to the state of the defendant's incorporation or principal office.

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* Reported unofficially, 34 US Law Week 2384 (January 25, 1966).

The *ratio decidendi* of the Fifth Circuit in the instant case was that "there is a shocking inconsistency in a rule of law which permits a corporation to maintain a regular, established place of business in the district . . . but allows the corporation to insist on a trial of the factual issues in the district in which it is incorporated or in which its principal office is located".

The Fourth Circuit's opinion holds that "there would be obvious unfairness in requiring the plaintiff to sue in the district of the defendant's incorporation or of its principal office".

Both courts apparently overlooked the fact that the "shocking unfairness" to which they refer was the express intent of Congress, followed by all courts without question, for nearly thirty years from enactment of the Jones Act in 1920 until general revision of the Judicial Code in 1948.

Both the Fourth and Fifth Circuits apparently also overlooked this Court's holding in *Fourco* as to this question of policy, that the revisers of the Judicial Code "are uniformly clear that no changes of law or policy are to be presumed from changes of language in the revision unless an intent to make such changes is clearly expressed", quoting Professor Moore of Yale, "a special consultant on this revision", who "stated that: 'Venue provisions have not been altered by the revision.'"

It is again respectfully submitted that modification of a statutory provision on policy grounds lies within the

prerogative of the legislative, not the judicial, branch, and that the judgment below is accordingly erroneous and should be reversed.

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March, 1966

SUPREME COURT OF THE UNITED STATES

No. 692.—October Term, 1965.

The Pure Oil Company, Petitioner, *v.* Pascual Suarez.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 16, 1966.]

Mr. Justice Harlan delivered the opinion of the Court.

Respondent Suarez is a seaman who was employed on the steamship "Pure Oil," owned and operated by petitioner Pure Oil Company. Suarez brought this action against Pure Oil in the United States District Court for the Southern District of Florida to recover damages for personal injuries allegedly suffered in the course of his employment. He sued in negligence under the Jones Act, 41 Stat. 1007, 46 U. S. C. § 688 (1964 ed.), and alternatively on the theory that the vessel was unseaworthy. The Pure Oil Company moved to transfer the case to the Northern District of Illinois on the ground that venue was improper in Florida. The District Court denied the motion, certifying the question of venue for interlocutory appeal to the Court of Appeals under 28 U. S. C. § 1292 (b) (1964 ed.). That court affirmed the ruling of the District Court, 346 F. 2d 890. Certiorari was granted, 382 U. S. 972, in order to determine whether the decision below is inconsistent with this Court's decision in *Fourco Glass Co.* v. *Transmirra Prods. Corp.*, 353 U. S. 222, and to resolve a conflict among the circuits on that score.[1] We do not find the *Fourco* case controlling, and affirm the judgment of the Court of Appeals.

[1] Compare the Third Circuit's decision in *Leith* v. *Oil Transport Co.*, 321 F. 2d 591, with the Fourth Circuit's decision in *Fanning* v. *United Fruit Co.*, 355 F. 2d 147, which followed the Fifth Circuit's decision in the present case.

The Jones Act, which ultimately governs the venue issue before us,[2] contains the following provision:

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." 46 U. S. C. § 688.

Preliminarily it should be noted that although this provision is framed in jurisdictional terms, the Court has held that it refers only to venue, *Panama R. Co.* v. *Johnson*, 264 U. S. 375. It is conceded that as enacted and originally interpreted the statute would not authorize Florida venue in this instance, for corporate residence traditionally meant place of incorporation, in this case Ohio, and Pure Oil's principal office is in Illinois. The Court of Appeals held, however, that residence had been redefined by the expanded general venue statute, 28 U. S. C. § 1391 (c) (1964 ed.), passed in 1948. That statute provides:

> "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the *residence* of such corporation for venue purposes." (Emphasis added.)

If this definition of residence is applicable to the Jones Act venue provision, it is conceded that the action was properly brought in Florida, where Pure Oil has transacted a substantial amount of business. We hold that this definition does so apply and that venue in Florida was proper.

The effect of § 1391 (c) was to broaden the general venue requirements in actions against corporations by

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[2] The Court of Appeals stated that the Jones Act venue provision must be met if, as here, an action is based on both unseaworthiness and the Jones Act, 346 F. 2d, at 891. Because of our disposition of the case we find no occasion to pass upon this issue, which was not raised in this Court.

providing a forum in any judicial district in which the corporate defendant "is doing business." See Moore, Commentary on the Judicial Code 193–194 (1949); 1 Barron and Holtzoff, Federal Practice and Procedure, § 80, at 386 (Wright rev. 1960). It seems manifest that this change was made in order to bring venue law in tune with modern concepts of corporate operations.[3] The question here involves the reach of these changes. The redefinition of corporate residence clearly touches the general diversity and federal-question venue provisions of §§ 1391 (a) and (b). Although there is no elucidation from statutory history as to the intended effect of § 1391 (c) on special venue provisions, the liberalizing purpose underlying its enactment and the generality of its language support the view that it applies to all venue statutes using residence as a criterion, at least in the absence of contrary restrictive indications in any such statute.

This view of § 1391 (c) is basically consistent with the purposes and language of the Jones Act, whose thrust was not primarily directed at venue, but rather at giving seamen substantive rights and a federal forum for their vindication. In so doing, it provided a more generous choice of forum than would have been available at that time under the general venue statute. Compare Act of March 3, 1911, c. 231, §§ 50, 51, 36 Stat. 1101. Though one aspect of the special venue provision was phrased in terms of "residence," which as applied to a corporate employer was then generally understood to

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[3] As the Court of Appeals stated in *Transmirra Prods. Corp.* v. *Fourco Glass Co.*, 233 F. 2d 885, 887, "The rationale of this sharp break with ancient formulae is quite obviously a response to a general conviction that it was 'intolerable if the traditional concepts of "residence" and "presence" kept a corporation from being sued wherever it was creating liabilities.'" Although this Court reversed in *Fourco, supra,* for reasons discussed later (*infra,* p. ——), the validity of this general observation was in no way questioned.

mean the place of incorporation, see *In re Keasbey & Mattison Co.*, 160 U. S. 221, 229, the statute also permitted suit in the district where the principal office of the employer was located. See p. ——, *supra*. Moreover, there is nothing in the legislative history of this provision of the Jones Act [4] to indicate that its framers meant to use "residence" as anything more than a referent to more general doctrines of venue rules, which might alter in the future.[5]

The sole authority that might be thought to stand in the way of reading the Jones Act to embrace the residence definition of § 1391 (c) is *Fourco Glass Co.* v. *Transmirra Prods. Corp.*, 353 U. S. 222. A consideration of the setting in which that decision was made reveals that it must be taken as limited to the particular question of statutory construction presented there. *Fourco* concerned the interrelation of § 1391 (c) and the special venue provision governing patent infringement suits, 28 U. S. C. § 1400 (b) (1964 ed.). The Court held that the new definition of residence in § 1391 (c) was not carried

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[4] Section 688 was enacted as § 33 of the Merchant Marine Act of 1920, 41 Stat. 1007. The Act was primarily concerned with the creation and maintenance of a national merchant marine fleet. The substantive part of § 33, dealing with seamen's relief, was introduced in the Senate as an amendment to the House bill, and was passed without discussion. 59 Cong. Rec. 7044 (1920). The venue provision was added by the House-Senate Conference Committee, see H. R. Rep. No. 1107, 66th Cong., 2d Sess., 19–20 (1920).

[5] We do not think these conclusions are vitiated by the fact that application of the wider residence definition of § 1391 (c) to the Jones Act makes the alternative "principal office" venue provision of the latter statute superfluous as regards corporate employers. That provision continues to serve its original purpose when the defendant employer is not a corporation. Nor does the § 1391 (c) provision come into conflict with "principal office," unless that provision is deemed to have been *restrictive* in its origins, a proposition for which no support can be found.

over into §1400 (b). This holding, however, was based on factors inapplicable to the case before us today.

First, the patent venue section at issue in *Fourco* was itself revised in 1948 [6] in the same Act that contained § 1391 (c). *Fourco* did not directly concern itself with the scope of § 1391 (c). Rather, the Court inquired into the evidence revealing congressional purpose with respect to changes in § 1400 (b), and concluded that Congress wished it to remain in substance precisely as it had been before the revision. This legislative background of § 1400 (b) is of no relevance of course to a determination of the effect of § 1391 (c) on the Jones Act, for the latter's venue provision was not re-enacted contemporaneously with § 1391 (c). Thus, there is nothing to show a congressional purpose negativing the more natural reading of the two venue sections together.

Second, the decision in *Fourco* relied heavily on the reviser's purpose to maintain § 1400 (b) as it had been interpreted in *Stonite Prods. Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561. In *Stonite* this Court recognized that there were particular reasons why Congress had passed the predecessor of § 1400 (b). Confusion had been engendered by judicial decisions holding that patent infringers could be sued wherever they might be found, even though a newly enacted general venue statute of 1887 provided more limited venue. See 315 U. S., at 563–565. The patent infringement venue statute was enacted in 1897, 29 Stat. 695, specifically to narrow venue in such suits. This Court in *Fourco*, after determining that the 1948 revision of § 1400 (b) was meant to introduce no substantive change in the provision, was merely following the purpose and letter of the original enactment.

[6] It reads: "Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business."

The Jones Act venue provision presents quite a different history. As a minor provision in a major substantive enactment, no particular attention was directed to its terms; indeed, the venue provision was first presented in the report of the House-Senate Conference Committee, see H. R. Rep. No. 1107, 66th Cong., 2d Sess., 19–20 (1920), and was apparently never discussed in committee reports or on the floor of either House. Thus, it is unlikely that the Congress meant to infuse the concept of corporate residence with any special meaning that should remain impervious to changes in standards effected by more general venue statutes. Moreover, it can be said with reasonable certainty that the provision was intended to liberalize venue, see, *supra*, p. ——, unlike the patent infringement rule which was meant to constrict it. We conclude that here, in contrast to the situation dealt with in *Fourco*, the basic intent of the Congress is best furthered by carrying the broader residence definition of § 1391 (c) into the Jones Act.

Affirmed.